

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-2069

In The
United States Court of Appeals
For The Second Circuit

FRED SCHULMAN,
Plaintiff-Appellant,

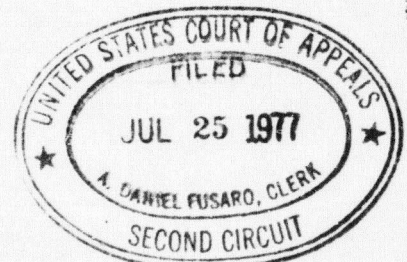
-against-

UNITED STATES OF AMERICA,
Defendant-Appellee.

*On Appeal from the United States District Court for the
Southern District of New York.*

APPELLANT'S APPENDIX

LEVINE & POZNANSKY
Attorneys for Plaintiff-Appellant
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New York, New York 10019
(212) 581-3264



PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

SE PO ☐ JUDGE ~~XXXXXX~~ Assigned U.S.
 SE MO ☐ 0855
 CR VLS ☐ 0208 1
 NY FV ☐ 0208 1

vs. SIFF, JAMES

LAST, FIRST, MIDDLE)

(pp. 1a-11a)

Case Filed
Mo. Day

07 21

Year of Date
03

1a

76

0666

01

U.S. TITLE/SECTION

OFFENSES CHARGED

ORIGINAL COUNTS

21:846 Consp. to viol. Fed. Narco. Laws.
 21:812,841 Distr. & possess. of Cocaine, II.

1
 2-5

21:844 Possession of Cocaine, II.

1

U.S. MAG.
CASE NO.

BAIL - RELEASE

☐ AMT ☐ Forfeiture
☐ Denied ☐ Set ☐ Pers. Recog
☐ S ☐ 000 ☐ PSA

☐ Date ☐ Conditions
☐ Bail Not Made ☐ 10% Deposit
☐ Status Changed ☐ Surety Bond
 (See Docket) ☐ Other ☐ Collateral

II. KEY DATES & INTERVALS

SUPERSEDING
COUNTS

ARREST or

INDICTMENT X

ARRAIGNMENT

TRIAL

3 Court Began
 7-21-76
 Summons Served
 First Appearance

High Risk Date
 7-21-76
 Indict. Waived
 In Charging District

Information
 7-21-76
 Superseding
 Indictment X
 10-26-76

7-29-76
 1st Pca
 7-29-76
 Final Pca
 10-26-76

Trial Set For
 NG ☒ G ☐ NOL
 IG Pca
 W/Drawn

TRIAL
 Trial Began
 Trial Ended

Disposition
 of Cases
 10-26-76
 Convicted
 Acquitted
 Dismissed

SENTENCE

12-10-76

☒ On All Charges
☐ On Lesser
☐ On Lesser
☐ On Government Motion

MAGISTRATE

Search Warrant	DATE	INITIAL NO.	INITIAL APPEARANCE DATE	INITIAL NO.	OUTCOME
Issued					
Return					
Summons					
Served					
Arrest Warrant issued					
COMPLAINT					
OFFENSE					
(in Complaint)					

U.S. Attorney or Asst.

Alan Levine
 791-0932

ATTORNEYS

Defense ☐ CJA ☒ Ret. ☐ Waived ☐ Self ☐ None / Other ☐ PO ☐ DO

Nickerson, Kramer, Lowenstein, Nessen, Kamin
 & Soll - 919 Third Ave, N.Y.C. 10022
 tele: 688-1100

236

Show names and suffix numbers of other defendants on same indictment information.

Deleonardis-2, Lubash-3.

PROCEEDINGS

EXCLUDABLE DELAY

7-21-76 Filed indictment.

7-29-76 Deft. and atty. (Charlotte Fishman) present. Enters a not guilty plea. Deft. ordered F/P. Deft. R.O.R. Bail limits extended to Continental U.S.A. (Trial 0-5 days) Case assigned to Judge Knapp for all purposes. 10 days for Motions. Conner, J.

07-30-76 Filed notice of appearance of atty. Nickerson, Kramer, Lowenstein, Nessen, Kamin & Soll.

08-05-76 Pre-trial Conference held. (atty. present) Trial set for 10-12-76 at 10:30. Motions ret. 09-17-76 at 2:00. Knapp J.

09-07-76 Filed Govt's bill of particulars.

09-24-76 Filed memoend on letter 9-21-76. Treating this letter as an appl. for adjournment, it must be denied. Knapp, J. m/n

09-29-76 Filed deft's omnibus memo. of law re: support of motions 1 through 4 now before the Court.

POSITIVE THE APPLICABLE DOCKET ENTRIES SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC § 3161(h)

DATE	(DOCUMENT NO.)	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY
10-6-76		Filed affdvt. of Alan Livine, in opposition to defts motion for (1) dismissal of the indictment; (2) discovery; (3) severance and (4) bill of particulars.		
10-6-76		Filed defts. notice of motion for a Order Dismissing the Indictment and Related Prior Relief Under the Fifth and Sixth Amendments to the United States Constitution, Rule 12(b) and Rule 16 of the F.R.C.P.		
10-6-76		Filed defts. notice of motion for and order under Rule 16 of the Federal Rules of Criminal Procedure and under the Fifth and Sixth Amendments of the United States Constitution (Discovery).		
10-6-76		Filed defts. notice of motion pursuant to Rules 14 and 8 (b) of the F.R.C.P. Severance.		
10-6-76		Filed defts. notice of motion for an Order Under Rule 7(f) of the F.R.C.P. (Bill of Particulars).		
10-6-76		Filed defts. affdvt. in support of motions for dismissal, for documentary discovery, and for a bill of particulars.		
10-7-76		Filed affdvt. of Rose Pagnotta, the deponent served the within motions filed on 10-6-76 upon Alan Levine A.U.S.A.		
10-6-76		Filed affdvt. of Rose Pagnotta, the deponent served the within supplemental affdvt. filed on 10-6-76 upon Alan Levine, A.U.S.A.		
10-7-76		Filed Govt's amended bill of particulars.		
10-7-76		Hearing held on pre-trial motions.		
10-7-76		Filed transcript of record of proceedings, dated 8-5-76.	2	10-7
10-6-76		Filed Superseding Information & referred to Knapp, J. Def. present (atty. Maurice Nessen) pleads guilty to the instant information. P.S.I. Ordered. Sentence adjourned to 12-8-76 at 9:30 am. Def. continued R.O.R... Knapp, J.		
10-6-76		Filed Memorandum and Order - all motions outstanding on behalf of deft are dismissed in light of his plea of guilty. Knapp, J. m/n		
10-6-76		Filed deft's reply affdvt. re: certain motions.		
10-6-76		Filed deft's affdvt. re: further material.		
10-6-76		Filed deft's affdvt. re: additional possible material.		
10-6-76		Filed one envelope ordered sealed. Knapp, J.		

FINE AND RESTITUTION PAYMENTS

RECEIPT NUMBER	CD NUMBER	DATE	RECEIPT NUMBER

PROCEEDINGS

- 13-76 Filed transcript of record of proceedings, dated 10-7-76.
- 13-76 Filed transcript of record of proceedings, dated 10-26-76.
- 16-76 Filed sentencing memorandum on behalf of deft.
- 10-76 Filed Judgment (atty. Maurice Nessen) Imposition of sentence is suspended and the deft. placed on unsupervised probation for a period of 5 years. Knapp, J. issued all copies
- 28-77 Orig. charges- entered and filed nolle prosequi. Knapp, J.

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

4a

75 CRIM. 82

D. C. Form No. 100 Rev.

JUDGE KNAPP

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
us.	Thomas M. Fortuin, AUSA.
RAYMOND MADEO- 1-3	791-0932 9.56
FRED SCHULMAN-1&2	Mormoe FL - 1941
	For Defendant:

(07) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk				
J.S. 3 mailed / 2 ✓	Marshal				
Violation	Docket fee				
Title 21&18					
Sec. 846, 812, 841(a)(1), (b) & 924(c)(2)					
Consp. to viol. Fed. Narco. Laws. (Ct. 1)					
Distr. & possess. w/intent to distr. Cocaine, II. (Ct. 2)					
Possess. of firearm dur. commission of a felony (Ct. 3)					
(Three Counts)					

DATE	PROCEEDINGS
1-24-75	Filed indictment. (Related to 74Cr557 and referred to Knapp, J.)
1/29/75	Filed deft. R. Madeo's notice of motion re: dismissal, ret. 2/4/75.
1/30/75	Filed Govt.'s affdvt. for writ of habeas corpus ad testificandum, for Coe Wells, D.O.B. 1/14/46. ret. 2/4/75.
2/3/75	Marked off. Frankel, J.
1/30/75	Filed Govt.'s affdvt. for writ of habeas corpus ad testificandum, for Jesse Charles Baletti, Jr. Writ issued ret. 2/6/75.
1/10/75	Deft. Madeo (atty. present) deft. withdraws his plea of not guilty and pleads guilty to count 1 only. Pre-sentence investigation ordered. Sentence adj. 'd. to 4/4/75. Bail conditions cont'd. Knapp, J.
-07-75	Filed Govt.'s affdvt. re: support of application for adjournment of sentencing.

DATE

PROCEEDINGS

4-22-75 Filed pre-sentence report (received from Judge's chambers 4-21-75) submitted by atty. for deft. Madeo.

4-22-75 Filed Govt's sentencing memorandum.

4-18-75 RAYMOND MADEO-(atty. present) Filed JUDGMENT- deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of THREE (3) YEARS and SIX (6) MONTHS. Pursuant to the provisions of T. 21 U.S.C. 841, deft. is placed on THREE (3) YEARS Special Parole to commence upon the expiration of the term of imprisonment. Subject to the conditions agreed upon in open Court, surrender of the deft. to the U.S. Marshal is stayed until 4-28-75 at 10:30AM. in room 506 of the U.S. Court House in the SDNY. On deft.'s motion, with consent of the Govt., counts 2 and 3 are dismissed. Knapp, J. issued all copies.

4-29-75 Filed ORDER that the deft. R. Madeo's surrender date is adj. to 5-2-75. Knapp, J. mn

4-02-75 Deft. Raymond Madeo surrenders for service of sentence.

5-16-75 *Raymond Madeo - ~~sent~~ commitment & custody to Fed Det. Hdqrs. 5-2-75*

4-23-75 Filed CONSENT ORDER that the bail posted for the deft. Raymond Madeo under indictment No. 74 Cr. 557, which was superseded by indictment No. 75 Cr. 82, is hereby exonerated. Knapp, J. mn

4-27-75 Filed Govt.'s affdvt. re: response to the motion of deft. R. Madeo for dismissal of superseding indictment.

4-27-75 Filed Deft. R. Madeo's memo. of law re: support of motion to dismiss.

4-27-75 Filed Govt.'s suppl. requests to charge.

4-18-75 Filed deft.'s (R. Madeo) notice of motion re: modification of sentence ret: 7-29-75.

4-04-75 Deft. Fred Schulman (atty. present) waives formal reading & pleads not guilty to this indictment & 74 Cr. 557. Bail fixed on both indictments at \$25,000. secured by deed to Pastor Chevrolet Bond Co-signed by Bernard Pastor. Deft. to surrender passport to AUSA Carey on 8-5-75. Bail limits to include states of N.Y.N.J., and Conn. Deft. photograph & fingerprinted. Knapp, J.

4-05-75 F. Schulman- filed P.R.B. in the sum of \$25,000.

4-4-75 Filed Govt.'s affdvt. for w/h/c ad testificandum for Raymond Madeo. ret: 12-8-75.

4-11-75 Filed Govt.'s notice of readiness for trial.

4-11-75 Deft. Schulman (atty. James Siff present) jury trial begun before Judge Knapp.

4-12-75 Trial adj. to 1-26-76 at 10. Knapp, J.

DATE	PROCEEDINGS
02-17-76	Filed def't. Schulman's requests to charge.
02-17-76	Filed Govt.'s request to charge.
02-17-76	Filed Govt.'s voir dire.
02-17-76	Filed def't.'s suppl. memo. of law re: reduction of sentence, etc.
02-02-76	Def't. Scherlaman (atty. James Siff present) jury impanelled before Judge Knapp.
02-03-76	Trial cont'd.
02-04-76	Trial cont'd.
02-05-76	Trial continued and concluded. Jury deliberates. Jury Verdict- def't. guilty to counts 1 & 2. Pre-sentence investigation ordered. Date of sentence 3-18-76. Knapp, J.
02-17-76	Filed affdvt. for w/h/c ad testificandum for Raymond Madeo return-satisfied 2-6-76. Motley, J.
3-29-76	Filed transcript of record of proceedings, dated 02-12-75
4-08-76	Filed Opinion # 44201- def't. Madeo's motion for reduction of sentence...denied. Knapp, J. m/n pro-se
5-6-76	Filed transcript of record of proceedings, dated 9-30-75.
5-6-76	Filed transcript of record of proceedings, dated 2-2-76.
5-6-76	Filed transcript of record of proceedings, dated 2-19-76.
05-26-76	Fred Schulman (atty. James E. Siff) Filed JUDGMENT-cts. 1 & 2-2 1/2 yrs. impr. ea. ct. conc. 21:841 3 yrs. S.P. Def't. is cont'd. on present bail until 9:30AM 6-1-76, at which time he is to surrender directly to the U.S. Marshal at M.C.C. Knapp, J. Issued all copies.
06-09-76	F. Schulman- filed copy of j & c, and marshal's return: def't. delivered to M.C.C. N.Y.C. on 6-1-76.
09-03-76	Filed def't. F. Schulman's notice of motion re: reduction of sent. ret: 9-14-76.
9-28-76	Filed Opinion #45166 The motion of Fred Schulman, to modify sentence in all respects denied.....So Ordered....KNAPP, J.
9-17-76	Filed def'ts. affdvt. and notice of motion for reconsideration of sentence under rule 35.
10-4-76	Filed memo-end on motion for reduction of sentence under Rule 35 motion denied.....KNAPP, J.

DATE

7a

PROCEEDINGS

10-12-76 5/26/76
10-12-76 2-2-76 - 2-6-76

02-04-77 Filed memo-end. on deft. Fred Schulman's appl. to vacate sentence dated 1-28-77
" a copy of this document having been forwarded to the Assistant U.S. Atty,
it is ordered that this document be filed as a 2255 motion". Knapp, J. m/n
(77 Civ. 574)

DATE	PROCEEDINGS
10-12-76	5/26/76
10-12-76	2-2-76 - 2-6-76
02-04-77	Filed memo-end. on deft. Fred Schulman's appl. to vacate sentence dated 1-28-77 " a copy of this document having been forwarded to the Assistant U.S. Atty, it is ordered that this document be filed as a 2255 motion". Knapp, J. m/n (77 Civ. 574)
02-14-77	Filed notice of appearance of atty. for deft. Fred Schulman: Levine & Poznansky- 1350 Ave. of the Americas, N.Y.C. 10019.
02-17-77	Filed deft. Fred Schulman's suppl. motion for a modification or reduction in sentence.
3-23-77	Fred Schulman-Filed Memorandum and order. Having read all the papers in 7 Civ. 574 and in 7 Civ. 122, and it appearing that both are motions to vacate sentence pursuant to 28 U.S.C. 2255, he hereby order their consolidation for all purposes. So ordered. Knapp, J. m/n

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY	
	(Document No.)	(a)	(b)
03-15-77	Filed deft. Fred Schulman's motion to vacate sentence 28 U.S.C. 2255 (see 77 Civil 1229)		
03-23-77	Filed Govt's affdvt for w/h/c ad testificandum for Fred Schulman.....Writ issued ret. 3/24/77		
03-29-77	Hearing began before Knapp, J. with non-jury.		
03-29-77	" began and concluded. Judge's Decision-Reserved on motion pursuant to T.21, 20.Sec.2255.		
03-30-77	Filed Writ of H/c Ad Testificandum. Metzner, J. with Marshal's return. Partially executed writ of 3/23/77 by taking Fred Schulman from custody of Warden J. C. Danbury, Conn and remanding same to custody of Warden H. C. HMC.		
03-30-77	Writ Satisfied. Knapp, J.		
04-28-77	Filed deft Fred Schulman's memo of law in support of his motion to vacate sentence.		
05-10-77	Filed govt's memo in opposition to Fred Schulman's applic. pur. 28. 2255 .		
06-08-77	Filed transcript of record of proceeding held 3-29-77. (Fred Schulman)		
06-15-77	Filed Memorandum & Order...deft. Fred Schulman's motions for vacation of sentence...denied. Knapp, J. mailed copy		
06-23-77	Filed Notice of Appeal by dft Schulman to the U.S.C.A. from the order entered 6/13/77 . Notice to U.S. Atty & dft.		

ST/OFFICE	DOCKET		FILING DATE			J	N/S	10a		R	DEMAND	JUDGE	JURY	DOCKET	
	YR.	NUMBER	MO.	DAY	YEAR			O	R					23	OTHER
8-1	77	0574	02	04	77	2	510	1						0855	77 0574

PLAINTIFFS

DEFENDANTS

JUDGE KNAPP

SCHULMAN, FRED 75 Cr.82

UNITED STATES OF AMERICA

CAUSE

Motion to vacate sentence. 28 U.S.C. 2255.

HMC

ATTORNEYS

FRED SCHULMAN, PRO SE, 03055
F.C.I.
PEMBROKE STATION
DANBURY, CONN 06810

AUSA THOMAS M. FORTUIN
Tel: 791-9156

CHECK HERE CASE WAS FILED	FILING FEES PAID		STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD DATE MAILED

DATE	NR.	PROCEEDINGS	11a
-04-77		motion to vacate sentence - 28 U.S.C.2255 (See 75 Cr.85) NO-FURTHER-ENTRIES	

INDICTMENT (Filed July 21, 1976)

(pp. 12a-14a)

12a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

RAYMOND MADEO, and
FRED SCHULMAN,

Defendants.

INDICTMENT

S 75 Cr.

The Grand Jury charges:

COUNT ONE

1. From on or about the 1st day of June, 1972, and continuously thereafter up to and including June 6, 1974, in the Southern District of New York, RAYMOND MADEO and FRED SCHULMAN, the defendants, and David Gartner, Steven Diskin, Edward Charles Baletti, a/k/a Jesse Bambu and Larry Shaw, named herein as co-conspirators but not as co-defendants, and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuante of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about the first week in July, 1972 *was still* in an apartment at 255 West 82nd Street, New York, New York, the defendant RAYMOND MADEO gave away four ounces of cocaine. *TO L L*

2. On or about the first week of July, 1972, the defendant FRED SCHULMAN received \$1,600 in part payment for the delivery of some cocaine. *Fain L L where?*

3. On or about July 7, 1972, the defendants RAYMOND MADEO and FRED SCHULMAN delivered a quantity of cocaine to David Gartner. *How much? any act in between*

4. On or about March 25, 1973, the defendants RAYMOND MADEO and FRED SCHULMAN had a meeting at the Al Mounia Bar at 38th Street and Madison Avenue, New York, New York. *Wh. Present DEA - DISK 10076*

(Title 21, United States Code, Section 846.)

The Grand Jury further charges:

COUNT TWO

On or about the 7th day of July, 1972, in the Southern District of New York, RAYMOND MADEO and FRED SCHULMAN, the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a schedule I controlled substance, to wit, approximately four ounces of cocaine hydrochloride.

(Title 21, United States Code, Sections 842, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges:

From on or about the 1st day of June, 1972, up to and including June 6th 1974, in the Southern District of New York, RAYMOND MADEO, the defendant, unlawfully, wilfully and knowingly, did carry a firearm, to wit, a .357 magnum ~~CONCHER~~ automatic pistol, during the commission of a felony for which he may be prosecuted in a court of the United States, to wit, the felonies charged in Counts One and Two in this Indictment.

(Title 18, United States Code, Section 924(c)(2).)

FOREMAN

PAUL J. CURRAN
United States Attorney

MOTION UNDER 28 U.S.C. SECTION 2255
(pp. 15a-21a)

S.D.N.Y. Form 1
(Rule 26 5-24-65)

1-30-77 15a
mrf

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRED SCHULMAN
PETITIONER

vs.
UNITED STATES OF AMERICA

Case No. _____
(Clerk to supply)

Motion under 28 U.S.C. §2255
by Person in Federal Custody
attacking Sentence

INSTRUCTIONS—READ CAREFULLY

To be considered by the District Court, the motion must be in writing ^{in English} (*legibly handwritten or typewritten*), signed by the person in custody and verified (*notarized*). Answers to each applicable question must be concise. If the space is too small for the answer to a particular question, finish it on the reverse side of the page or insert an additional blank page, making clear to which question the continued answer refers.

Every motion under §2255 of Title 28, United States Code, must be sworn to under oath. A false statement of a material fact in it may be made the basis of prosecution and conviction for perjury. Take care to make the answers true and correct.

If the motion is made *in forma pauperis*, it shall include an affidavit (*attached at the back of the form*) setting forth information that will establish whether petitioner is unable to pay the fees and costs of the 2255 proceedings.

When the motion is completed, *the original and two copies* shall be mailed to the Clerk of the District Court for the Southern District of New York.

1. Place of detention F.C.I., DANBURY, CT. 06810

2. Name and location of court which, and name of judge who, imposed sentence
U.S. District Court, Southern District of New York Judge Milton Tapp

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
- (a) 75-Cr-82
- (b) _____
- (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
- (a) May 26, 1976 Two years, 6 Mo., and 3 years apt.
- (b) _____
- (c) _____
5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
6. If you were found guilty after a plea of not guilty, check whether that finding was made by
- (a) a jury X
- (b) a judge without a jury _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? no
8. If you answered "yes" to (7), list
- (a) the name of each court to which you appealed:
- i. _____
- ii. _____
- iii. _____

(b) the result in each such court to which you appealed:

- i. _____
- ii. _____
- iii. _____

(c) the date of each such result:

- i. _____
- ii. _____
- iii. _____

(d) if known, citations of any written opinions or orders entered pursuant to such results:

- i. _____
- ii. _____
- iii. _____

9. State concisely all the grounds on which you base your allegations that the sentence which was imposed on you is invalid:

(a) Denial of Effective Assistance of Counsel

(b) Conflict of Interest and Denial of Appeal

(c) Denial of Due Process; Right to appeal

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) Attorney James Siff represented me but never informed me that he himself was under investigation. He now has been disbarred from practice and pled guilty and received a suspended sentence. Before the same Judge and the same DEA Agent Jeffery Hall who also arrested my attorney as well as myself. No one informed me of this.

(b) Attorney James Siff who represented me without informing me of the conflict, did not appeal my conviction in which I now find there were grave errors of Law. My attorney James Siff further pleaded guilty to the same type crime with the same Judge and assistant U. S. Attorney and shows a definite conflict of interest.

(c) Attorney James Siff was indicted prior to the expiration of the time limit on petitioner's right to appeal. The attorney never filed said appeal and due process was violated and U.S. Attorney and DEA Agent Jeffery Hall (same agent) arrested the attorney and never notified the defendant.

11. Have you previously filed petitions for habeas corpus, motions under section 2255 of Title 28, United States Code, or any other applications, petitions or motions with respect to this conviction? No

12. If you answered "yes" to (11), list with respect to each petition, motion or application

(a) the specific nature thereof

i. _____

ii. _____

iii. _____

(b) the name and location of the court in which each was filed:

i. _____

ii. _____

iii. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

13. Has any ground set forth in (9) been previously presented to this or any other federal court by way of petition for habeas corpus, motion under section 2255 of Title 28, United States Code, or any other petition, motion or application? No

14. If you answered "yes" to (13), identify

(a) which grounds have been previously presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

15. Were you represented by an attorney at any time during the course of

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction

or the imposition of sentence? none

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

16. If you answered "yes" to one or more parts of (15), list

(a) the name and address of each attorney who represented you:

Attorney James Siff

401 Broadway

New York, New York

i. Attorney James Siff, 401 Broadway, New York, New York

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. All _____

ii. _____

iii. _____

17. If you are seeking leave to proceed *in forma pauperis*, have you completed the sworn affidavit setting forth the required information (see instructions, page 1 of this form)? I AM PAYING FOR IT

Signature of Moving Party

State of Connecticut
County of Fairfield

} ss

Fred Schulman, being first sworn under oath, presents that he has subscribed to the foregoing motion and does state that the information therein is true and correct to the best of his knowledge and belief.

Fred Schulman
Signature of Moving Party

SUBSCRIBED and SWORN TO before me this

_____ day of JAN 8 1 1977
(month) (year)

M. H. [Signature]
Notary Public

My commission expires

(month) (day) (year)

AFFIDAVIT OF FRED SCHUMAN IN SUPPORT OF MOTION

(pp. 22a-24a)
January 28, 1977

Re: United States v. Schulman

75 Cr. 82

The Honorable Judge Whitman Knapp,

I have been trying to get 2255 motion forms from the clerk of the court in the southern district for over two weeks and have been unsuccessful.

I intend to file a 2255 motion in an effort to vacate my sentence and after you hear the facts I am sure you will agree with me.

As you know Mr. James Siff esq. represented me throughout the entire case but I now find out that Mr. James Siff was arrested by the same D E A agent Jeffery Hall that arrested myself. I also learned that he was arrested for the same type of crime as me and was sentenced by the same Honorable court as myself. I further learned that he was indicted prior to the expiration of my filing of appeal. Why I am complaining is that no one informed me of this and I believe I was denied Due Process, the right to appeal. I believe a conflict of interest existed between my attorney and myself unknown to me and that the United States Government through their agent D.E.A. Jeffery Hall should have informed me and the court and allowed me to choose another attorney. To say now that James Siff esq. was ineffective is putting it mildly. I am no lawyer and did not know the law then but I have become educated here and I see that grave errors were made at the trial. One of the most severe and detrimental and prejudicial errors made was that at a pre-trial hearing you your honor said that the United States attorney could not mention heroin as this was a cocaine trial, yet at the trial at summation United States attorney pointing at me menacingly said "here is a man that Mr. Steven Diskin was told that Mr. Schulman (the defendant) could supply heroin to him." Also at direct examination of Mr. Steven Diskin it was said that "my co-defendant Mr. Raymond Madero said that Mr. Schulman could supply heroin of the highest quality if he needed to purchase it." Your honor, my argument now is that my so called attorney Mr. James Siff esq. could not possibly have been effective for he did not object to this nor did he try for a mistrial. It is obvious that because of his own problems whether he did it consciously or subconsciously because he tried to appease them and give them what amounts to a "sacrificial lamb" or because of the inability of counsel to adequately function under the pressure.

It is equally obvious that the defendant was "deceived" by his attorney who for his own self interest refused to disclose his predicament to the defendant and by the prosecutors office which permitted such a situation to exist and continue beyond appeal stage with out informing the court or the defendant of the obvious conflict of interest regarding which they had direct knowledge and participation. Jeffery Hall

January 28, 1977

D.E.A. agent - same agent that arrested defendant also arrested attorney. Same judge that sentenced defendant to thirty months with three years with special parole sentenced attorney for same type of crime to probation. In doing some researched work I have come up with these cases that help me immensely.

Thomas v. Zelker 332 S.Supp. (S.D.N.Y. 1971)

United States v. Wight, 176 F.2d 376 379 (2d Cir. 1949)

It is familiar law "that the right to counsel is the right to the effective assistance of counsel" Rastrom v. Robbins 319 F.Supp. 1090, 1092 (D Me. 1970). Among those showing that the adequacy of the representation fell below the constitutional minimum King v. Beto, 429 F.2d 221, 224 (5 Cir. 1970) See also U.S. ex rel. Williams v. Follette, 408 F.2d 658, 660 (2d Cir. 1969) Reversed on other grounds sub nom. McMann v. Richardson, 397 United States 759, 90 S.Ct. 1441 25 L. Ed. 2d 763 (1970); Pennington v. Beto, 437 F.2d 1281, 1285 n. 2 (5th Cir. 1971) Scott v. Mancusi, 429 F.2d 104, 109 (2d Cir. 1970).

In view of the facts it is respectfully submitted that the conviction should be vacated and the defendant should be returned to this court for trial. There are so many more errors like you suppressing the package of cocaine as to me but again my attorney who at this point I don't believe was an attorney refused to put me on the stand and testify to explain my side of the story. I would greatly appreciate you treating this as a 2255 motion so that I can have it filed. I will file it any way when and if I receive the forms but as you can understand every day is an eternity to me and would greatly appreciate if you can expedite the situation.

Thank You,

Respectfully,

Fred Schulman

Fred Schulman-03055

F.C.I.

Pembroke Station

Danbury, Conn. 06810

Sworn and subscribed to me this 29th day of 1977.

M. L. Long

F.C.I. Caseworker

Haines v. Kerner

92 S. Ct. 594 (1972)

That unless upon issuance of an order to show cause, the Government complies with 28 U.S.C. Sect. 2243; Petitioner will move for judgement by default F.R.C.P. (55). See United States ex. Rel. Witt v Exman 343 F. Supp. 392, 393, 394 (D. Ariz. 1972); See also rule 81 (a) (2), Fed. Rules Civil Proc. (28, U.S.C.).

In the peculiar, totality of the circumstances which surround this specific cause, petitioner believes, and therefore says, that he is restrained of his liberty illegally. That since there is no adequate remedy at law to redress petitioner for the time spent unlawfully restrained, this court, in the interests of justice and fundamental fairness, ought to order petitioner's release on bail pendants lite. See E.C. Bandy v United States 82 s. ct. 11 (1961).

I ask that the court remember, I am not an attorney and forgive small error.

Haines v Kerner 92 S. Ct. 594 (1972)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Respondent.

77 Civ. 574 (WK)

MARC MAIMARO, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York and as such am responsible for the captioned matter.
2. This affidavit is submitted in opposition to Fred Schulman's (Schulman) application made pursuant to 28 U.S.C. § 2255 to vacate the sentence imposed by this Court on May 26, 1976.
3. The crux of Schulman's application is that he was somehow deprived of the effective assistance of counsel because his attorney at trial, James Siff, Esq. (Siff) has been indicted and convicted for a narcotics offense. This claim is completely devoid of merit and should be rejected without an evidentiary hearing.
4. The files and records of the District Court disclose that Indictment 76 Cr. 666 was filed in this District charging Siff in five counts with conspiring to violate the narcotics laws and with having aided and abetted the distribution of cocaine on four separate occasions. Such files and records further disclose that on October 26, 1976 Siff entered a guilty plea to Superseding Information S 76 Cr. 666 charging him with possession of cocaine before the Honorable Whitman Knapp. See District Court Docket Sheet relating to Indictment 76 Cr. 666

5. The files and records of the District Court further indicate that Schulman's trial concluded on February 5, 1976 and he was sentenced on May 26, 1976. See District Court Docket Sheet relating to Indictment S 75 Cr. 82, attached hereto as Exhibit B.

6. Therefore, it is clear that Schulman's case was concluded, and his time to appeal had expired almost six weeks prior to the time Siff was indicted. Rule 4, Federal Rules of Appellate Procedure. Consequently, Schulman's statement in his application that Siff had been indicted prior to the expiration of Schulman's time to perfect an appeal is simply not true.

7. Moreover, deponent has been advised by Assistant United States Attorney Alan Levine, the prosecutor in charge of the Siff case, that Siff was unaware that he was under investigation prior to the time the indictment was returned. In fact, in moving to have this Court dismiss the indictment, Siff's attorney, Maurice N. Nessen, Esq. stated, inter alia that Siff had not been given an opportunity to testify before the grand jury prior to the time it returned an indictment. See Affidavit of Maurice N. Nessen, ¶ 18, sworn to on September 28, 1976, relating to Indictment 76 Cr. 666.

8. Since Siff was neither under indictment nor aware that he was the target of a Government investigation, Schulman's assertion that Siff's representation was ineffective because he "consciously or sub consciously ... tried to appease them and give them what amounts to a 'sacrificial lamb' or because of the inability of [Siff] to adequately function under the pressure" is patently frivolous.

MM:keo

9. Moreover, the examples cited by Schulman to support his contention that Siff's representation was ineffective are completely inadequate to support Schulman's claim. First, Schulman contends that he was somehow deprived of his right to appeal. The sentencing minutes indicate that Schulman was well aware of his right to appeal his conviction. That he chose not to do so by no means indicates that he was denied any of his rights.* Second, Schulman cites his attorney's failure to object to deponent's argument in summation that Raymond Madeo had told Stephen Diskin that Schulman could supply heroin. Since the indictment charged a conspiracy to distribute both Schedule I and II narcotic drug controlled substances, deponent's remark was a proper reference to a statement made by a co-conspirator during the course of the conspiracy and in furtherance of the conspiracy. Contrary to Schulman's assertion, deponent was never directed by the Court not to mention heroin. Third, Schulman states that his "attorney refused to put me on the stand and testify to explain my side of the story." This claim, which carries with it an implied assertion that Siff advised Schulman not to take the stand because of an improper motive, simply flies in the face of Schulman's post-trial position that he was indeed guilty of the crimes charged in the indictment. At Schulman's sentencing, Siff, with Schulman's obvious approval, stated to the Court that his client had knowingly participated in a narcotics transaction with Madeo. Thus, it is likely that Siff, knowing the nature of Schulman's involvement, felt that

* At sentencing, the Court, in denying a motion for bail pending appeal, stated that any appeal would be frivolous. This might explain the failure of Schulman to appeal.

MM:koo

any exculpatory version of the events testified to by Schulman would be perjurious and would ultimately do Schulman more harm than good.*

10. An examination of the trial record indicates that Siff vigorously cross examined all Government witnesses.** Siff's representation of Schulman was certainly well above any of the standards concerning effective assistance of counsel discussed by the Second Circuit in Rickenbacker v. Warden, Dkt. No. 76-2036 (2d Cir., Dec. 22, 1976), slip. op. at 1069-1072.

11. Schulman's application is based upon the mistaken belief that Siff was indicted prior to the time that a final judgment was entered on Indictment S 75 Cr. 82. The files and records of the District Court demonstrate that the contentions contained in Schulman's application concerning Siff's effectiveness as trial counsel are totally inadequate to form a basis for the relief requested. Therefore, Schulman's application is frivolous and should be denied without an evidentiary hearing.

HARC HANNAHO

Assistant United States Attorney

Sworn to before me this

9th day of February, 1977

CLORIA CHANDROSE
Notary Public, New York
Qualified in Westchester County
Commission Expires March 30, 1977

* If only good defense counsel has a ethical obligation to dissuade his client from committing perjury, but he must also consider whether his client's false testimony will result in an increased sentence. See United States v. Hendrix, 505 F. 2d 1233 (2d Cir. 1974), cert. denied, 423 U.S. 897 (1975). Indeed, at sentencing the Court commented favorably that Schulman had not perjured himself at trial. See sentencing transcript at 20.
** Including Special Agent Jeffrey Hall, whom Schulman contends was the agent who arrested both Schulman and Siff.

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT

29a

EXHIBIT A - DISTRICT COURT DOCKET SHEET RELATING TO INDICTMENT
76 CR 666

(Omitted here but printed at p. 1a)

30a

EXHIBIT B - DISTRICT COURT DOCKET SHEET RELATING TO INDICTMENT
NO. 75 CR. 82

(Omitted here but printed at p. 4a)

REPLY AFFIDAVIT OF MARVIN LEVINE

(pp. 31a-36a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
FRED SCHULMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.
-----x

AFFIDAVIT

77 Civ. 574 (WK)

STATE OF NEW YORK
COUNTY OF NEW YORK
SOUTHERN DISTRICT OF NEW YORK

MARVIN LEVINE, being duly sworn, deposes and says:

1. I am a member of the firm of Levine & Poznansky and have been requested by the defendant to represent him in relation to the within application for habeas corpus.

2. This affidavit is submitted in response to the affidavit by Marc Marmaro dated February 9, 1977.

3. I have personally spoken with Mr. James E. Siff who had represented Mr. Schulman and Mr. Siff has informed me of the following facts:

a) He was under investigation by the government in relation to narcotics prior to the trial of Fred Schulman.

b) He was taped by narcotics agents including special agents Hall & Sullivan on April 9 and 11, 1975.

c) When Schulman had surrendered in court on August 4, 1974 special agent Sullivan was in the court

d) On October 28, 1975 Mr. Siff was again taped in a conversation with a special confidential informant named Lubash.

e) The government had admitted in relation to proceedings concerning Siff that the investigation of Siff had been completed in October, 1975. The government had made this contention in order to refute a claim by Siff that part of the investigation and action taken against him were motivated by his representation of Schulman.

f) The government agents who were investigating Siff were the same agents as involved in the Schulman matter and they were specifically aware of the fact that Schulman's attorney was not only under investigation but was subject to being criminally charged.

g) Siff further admitted that he did become aware of the fact that he was the subject of investigation on February 26, 1976, at least two weeks after Schulman's trial and prior to being sentenced, although Siff was not aware that he was to be actually charged and indicted until the Grand Jury had returned its indictment. Mr. Siff further stated that his awareness that he was under investigation came from several different sources. Annexed hereto as Exhibit A is a copy of handwritten notes by Mr. Siff indicating the above facts.

4. Annexed hereto and made a part hereof as Exhibit B is a copy of an affidavit by Mr. Siff dated February 9, 1977, which had been submitted to this court in another proceeding United States v. Louis Sorrentino, 76 Cr. 626 (EW) in which Mr. Siff stated on page 2:

" I had been aware of the efforts of the Drug Enforcement Administration to make a case against me since April 9, 1975. As part of the government's apparent plan to intimidate me, certain information regarding this investigation was "leaked" to me by a government informant on or about February 26, 1976. However, it was not until July, 1976, that I was indicted, as aforesaid."

5. Thus the statements in paragraph 7 and 8 of the affidavit by Mr. Marmaro that Mr. Siff was unaware that he was under investigation prior to the time that the indictment was returned, are untrue. The affidavit by Mr. Siff's attorney Maurice Nessen is not in any way contra to Mr. Siff's statement and affidavit. There is a great deal of difference in being aware that one is the subject of an investigation and being aware that there are actual Grand Jury proceedings being conducted.

6. More important, it is clear that the government certainly did know of the fact that Mr. Siff was a subject of a specific narcotics investigation at the time that he was undertaking to represent Mr. Schulman. The investigation of Mr. Siff was by the very same narcotics agents as had investigated Mr. Schulman. There is no question since the same police officers were involved, that the government was therefore specifically aware of the conflicts problems.

7. Further it appears that during this same period the government was even taping Mr. Siff and otherwise conducting activities which would tend to limit the ability of an attorney to operate effectively.

8. It must also be emphasized that Mr. Schulman was entirely unaware of any conflicts that his attorney may have had. There was no connection between the specific activities of Mr. Siff and Mr. Schulman.

9. Even if Mr. Siff were unaware during the course of the trial that he was the subject of a specific investigation, he nevertheless had to be cognizant of his own activities. There does not seem to be any dispute that Mr. Siff did in fact engage in a similar type of criminal conduct ascribed to Mr. Schulman and the government knew of those facts. Under those circumstances, and in view of the identity of agents involved, who can say the extent to which Mr. Siff's advice to Mr. Schulman and actions and trial tactics were affected by a desire to hide and cover up Mr. Siff's own misdoings and thus deprived Schulman of the effective counsel representation guaranteed by the Sixth Amendment.

10. It is submitted that there should have been some disclosure to Mr. Schulman so that he would be aware that his attorney was disqualified from acting.

11. At a very minimum there should have been disclosure by the government to the court so that at least a judicial inquiry could have been made as to whether or not the extraordinary circumstances existing with regard to his attorney could operate as a dilution of the quality of representation guaranteed to the defendant by the Sixth Amendment of the Constitution. Lawyers as well as prosecutors are, by tradition and the canons of ethics, officers of the court. Improperity on behalf of either is therefore a direct reflection on the court itself as well as being a serious ripping away of the fabric of the judicial process.

12. There therefore have been a number of cases which indicate that under these circumstances the court itself should at a minimum be made aware of the misdoings by counsel and of the possible conflicts of interest presented, and the court should have conducted an inquiry with relation thereto.

In U.S. v. Carriqan & White, 543 F2nd 1053, (2d Cir. 1976) the court stated:

"The right to effective representation by counsel whose loyalty is undivided is so paramount in the proper demonstration of justice that it must, in some cases, take precedence over all other considerations, including the expressed preference of the defendants concerned and their attorney."

See also United States v. DeBarry 487 F2d 488 (2d Cir., 1973); Morgan v. United States 396 F2d 110, 116 (2d Cir., 1968); United States v. Olsen, 453 F2d 612, 616 (2d Cir. 1971).

13. When confronted with the argument that Appellant was deprived of his constitutional right to effective assistance of counsel, the Second Circuit Court of Appeals in United States v. Foster, 469 F2d 1, 3 stated:

"Both common sense and authority, see e.g. Glasser v. United States, 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680 (1942), instruct us to scrutinize the record with great care when such an allegation is made...this court is peculiarly sensitive to a showing of conflict of interest, if such can be suggested."

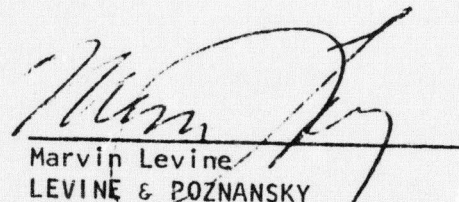
14. Specific prejudice need not be shown by the defendant. Where the type of conflict of interest as presented in this situation occurs, the burden is upon the government to establish lack of prejudice. Thus in U.S. v. Foster, Supra at page 5 the court stated:

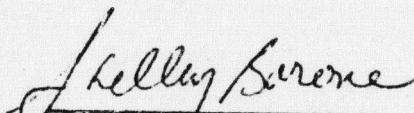
"When a satisfactory inquiry does not appear on the record, the burden of persuasion will shift to the government."

See also U.S. v. Olson, Supra.

It is therefore requested that the petition for habeas corpus herein be granted.

March 17, 1977


 Marvin Levine
 LEVINE & POZNANSKY
 1350 Avenue of Americas
 New York, New York 10019


 Notary Public

SHELLEY BARONE
 NOTARY PUBLIC, State of New York
 No. 511503
 Qualified in Kings County
 Commission Expires March 30, 1978.

Den. My - Jones, was involved in
a very complicated situation
of my case. vs a US District Judge
of the Sherman case.

Den. Siff

FCI, Pennington, who
was involved in the case.

① I was tapes by agents of the
DEA (including S/A Hall +
Sullivan) on April 9, - April
11, 1975.

② When I surrendered Sullivan
before WAPP, I on April 9,
1974 S/A Sullivan was
in Court.

③ On Oct 28, 1975 I
was taken to the cell of S/C//
Sullivan ready to be imprisoned
involvement of S/A G/S Hall -

④ ~~On Feb 11, 19~~

On December 14, 1975 trial was
commenced - a jury selected

On the ~~Dec 12~~ ^{Dec 12, 1975} day off motion
for an inspection of 'cells' & a
personnel file was made.

Jury was then adjourned until
January 26, 1976 for the purpose
of allowing the Govt to ~~comply~~
comply. It was further adjourned
until Feb 2, 1976 at which time a
new jury was empanelled & trial
was commenced & eventually
concluded on Feb 5, 1976.

Therefore govt agent knew of
the investigation of me at time of
Schulman's movement & continued

this during the pendency of
Schulman case.

39a

Issue is whether or not
govt was under an obligation
to inform either Siff or Schulman
at this time of the investigation
of Siff, or at the

least inform Huggs,
Of this in camera, as they
It is then judicial discretion
to intervene or opposed
to executive discretion.

~~It is of course absurd
to argue that Siff~~

EXHIBIT B - COPY OF AFFIDAVIT OF MR. SIFF DATED FEBRUARY 9, 1977
(pp. 40a-45a)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

- - - - -x

UNITED STATES OF AMERICA, : 76 Cr.626(EW)

-against- : AFFIDAVIT

LOUIS SORRENTINO, :

Defendant. :

- - - - -x

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

JAMES EVAN SIFF, being duly sworn, deposes and says:

I am a former member of the Bar of the State of New York and of this District, having resigned from same on November 13, 1976.

I was counsel for the defendant Sorrentino herein at all stages of the proceedings against him, through and including the trial on September 8 and 9, 1976, and sentencing on September 30, 1976.

Your deponent was indicted in this District under Indictment 76 Cr. 666 on July 21, 1976. Thereafter, on October 26, 1976, I entered a plea of guilty to a superseding information which charged possession of cocaine, as a misdemeanor.

I am providing this affidavit at the request of Bernard Kenny, Esq., Mr. Sorrentino's current counsel, for the purpose of providing the Court with information regarding my state of mind

and affairs at the time I represented Louis Sorrentino during the trial of the indictment against him, in connection with a motion I understand is being made on behalf of Mr. Sorrentino for a new trial. I trust that this affidavit will provide information helpful to this Court in making a determination as to my competence at the time of said trial.

At the time I tried the within action before Hon. Edward Weinfeld and a jury, on September 8, 1976, my own trial had been scheduled for October 10, 1976.

I had been aware of the efforts of the Drug Enforcement Administration to make a case against me since April 9, 1975. As part of the government's apparent plan to intimidate me, certain information regarding this investigation was "leaked" to me by a government informant on or about February 26, 1976. However, it was not until July, 1976, that I was indicted, as aforesaid.

From the time of my indictment, I lived in a state of constant depression regarding my future, both personal and professional. My difficulties were compounded by the fact that my fiancée broke our engagement and left me two days after my indictment, because of what she described as the disgrace and pressure of the matter. Hence, at the time of the Sorrentino trial, I was at a professional, emotional and psychological low.

From the time of the indictment in July, 1976, until my own case was finally terminated on December 10, 1976, I was for the most part sleepless, distraught and paranoid, and I was engrossed in concern over my own situation. Although I felt compelled to mask my fear and concern in dealings with colleagues and clients, I was nevertheless obsessed with the problems of my own fate.

Many people, including my own attorney, had questioned my decision with regard to my own plea, expressing the feeling that I had lost my desire to fight. It is for this Court to decide whether this concern affected my judgment and my ability to pursue Mr. Sorrentino's defense.

During the time of the Sorrentino trial, I was of course aware of the fact that the unit which was prosecuting Mr. Sorrentino was the same unit on my own case, and that the Drug Enforcement Agency which investigated Mr. Sorrentino's case, was the same group which had been investigating me and which would present evidence at my trial.

Accordingly, it is for this Court to determine whether these factors resulted in rendering me incompetent as matters of fact and law to represent Mr. Sorrentino in his trial. Specifically, whether or not there was a subconscious desire not to antagonize the prosecutors and drug agents, which may have entered

my decision making process in two crucial determinations, to wit, my decision not to cross-examine the government witnesses with regard to the occurrences at the scene of the crime and specifically with regard to the only witness who could actually place Mr. Sorrentino at the scene of the crime, and further, my decision not to put the defendant on the stand despite his vehement desire to testify in his own behalf.

When Judge Weinfeld was made aware of the charges pending against me, a hearing was held to determine if Mr. Sorrentino wished to have me continue as his defense counsel. Although Mr. Sorrentino was apprised of all of the surrounding circumstances concerning my indictment, it is nevertheless for this Court to determine whether or not Mr. Sorrentino was competent to make a determination as to whether or not he wanted to continue to retain me. He indicated to me that his decision to have me continue was based upon his confidence in me, my knowledge of his case and his trust in our relationship. However, he made this decision without the advice of outside counsel.

While Mr. Sorrentino and I may have believed that I was competent to represent him at the time of trial, it is for the Court to determine at this time whether I was able to render legal assistance and advice in his defense within a Sixth Amendment level of competence, and I have recited above facts to aid

the Court in the determination of that issue.

Sworn to before me this

7th day of February, 1977.

Jeffrey I. Lewis

0. 520
JAMES EVAN SIFF

JEFFREY I. LEWIS
NOTARY PUBLIC, State of New York
NO. 31-7531425
Qualified in New York County
Term Expires March 30, 1978

AFFIDAVIT OF MAILING

Joyce Cohen being duly sworn, deposes and says that she is employed in the office of Levine & Poznansky, 1350 Avenue of Americas, New York, New York.

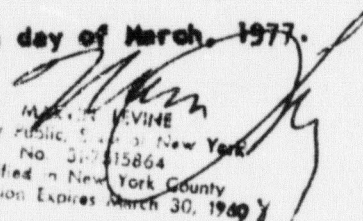
That on the 17th day of March, 1977, she served a copy of the within Affidavit by placing the same in a properly franked envelope addressed to: Marc Marmaro, Assistant United States Attorney in the office of Robert B. Fiske, Jr., U.S. Attorney for the Southern District of New York, One St. Andrews Place, New York, New York 10007.

By depositing same in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Joyce Cohen
Joyce Cohen

Sworn to before me this

17th day of March, 1977.


MARC MARMARO
Notary Public, State of New York
No. 317515864
Qualified in New York County
Commission Expires March 30, 1980

LETTER FROM SCHULMAN TO KNAPP

(pp. 46a-49a)

77 CIV. 0574

Re: United States v. Schulman.

75 Cr. 82

The Honorable Judge Whitman Knapp,

I have been trying to get some forms from the clerk of the court in the southern district for some weeks and have been unsuccessful.

I intend to file a writ of habeas corpus and after you hear the facts I am sure you will agree with me.

As you know Mr. James Siff esq. represented me throughout the entire case but I now find out that Mr. James Siff was arrested by the same D.E.A. agent Jeffery Hall that arrested myself. I also learned that he was arrested for the same type of crime as me and was sentenced by the same Honorable court as myself. I further learned that he was indicted prior to the expiration of my filing of appeal. Why I am complaining is that no one informed me of this and I believe I was denied the Process, the right to appeal. I believe a conflict of interest existed between my attorney and myself unknown to me and that the United States Government through their agent D.E.A. Jeffery Hall should have informed me and the court and allowed me to choose another attorney. To say now that James Siff esq. was ineffective is putting it mildly. I am an lawyer and did not know the law then but I have become educated here and I saw that grave errors were made at the trial. One of the most severe and detrimental and prejudicial errors made was that at a pre-trial hearing your honor said that the United States attorney could not mention heroin as this was a cocaine trial, yet at the trial at summation United States attorney pointing at me menacingly said "here is a man that Mr. Steven Diskin was told that Mr. Schulman (the defendant) could supply heroin to him." Also at direct examination of Mr. Steven Diskin it was said that "my co-defendant Mr. Raymond Madco said that Mr. Schulman could supply heroin of the highest quality if he needed to purchase it." Your honor, my argument was that my so called attorney Mr. James Siff esq. could not possibly have been ineffective for he did not object to this nor did he try for a retrial. It is obvious that because of his own problems whether he acted consciously or subconsciously because he tried to appease them and did not want to be a "sacrificial lamb" or because of the inability of counsel to perform function under the pressure.

It is equally obvious that the defendant was "deceived" by his attorney who for his own self interest tried to close his predicament to the defendant and by the government who permitted such a situation to exist and did not try to inform the court or the defendant of the obvious conflict of interest regarding which they had direct knowledge and participation. I am sure

January 28, 1977

47a

D.E.A. agent - same agent that arrested defendant also arrested attorney. Same judge that sentenced defendant to thirty months with three years with special parole sentenced attorney for same type of crime to probation, doing some researched work. I have come up with these cases that help me immensely.

Thomas v. Zeiler 332 S.Supp. (S.D.N.Y. 1971)

United States v. Wight, 176 F.2d 376 379 (2d Cir. 1949)

It is familiar law "that the right to counsel is the right to the effective assistance of counsel". Reston v. Robbins 319 F.Supp. 1090, 1092 (D. Me. 1970). Among those cases that the adequacy of the representation fell before the constitutional bar is King v. Betz, 429 F.2d 221, 224 (5 Cir. 1970) See also W. v. W., Williams v. Follette, 408 F.2d 658, 660 (2d Cir. 1969) Reversed on other grounds. Sub nom. McMann v. Richardson, 397 United States 759, 761 (1970). 2d 763 (1970); Pennington v. Betz, 437 F.2d 1207, 1225 n. 2 (5th Cir. 1971) Scott v. Mancusi, 429 F.2d 104, 109 (2d Cir. 1970).

In view of the fact it is respectfully submitted that the conviction should be vacated and the defendant should be returned to state court for trial. There are so many more errors like you suppressing the package of cocaine as to me but again my attorney who at this point I don't believe was an attorney refused to put me on the stand and testify to explain my side of the story. I would greatly appreciate you treating this as a 2855 motion so that I can have it filed. I will file it any way when and if I receive the forms but as you can understand every day is an eternity to me and would greatly appreciate if you can expedite the situation.

Thank You,

Respectfully,

Fred Schulman

Fred Schulman-03055

F.C.I.

Pembroke Station

Danbury, Conn. 06810

Sworn and subscribed to me this 27th day of 1977.

F.O.I. Cashwaker

Baines v. Kerner

92 S. Ct. 594 (1972)

that there is some evidence of an order to show cause, but
 Government exhibits with 28 U.S.C. Sect. 2242; Petitioner
 have been diligent in their efforts to obtain a writ of
habeas corpus under 28 U.S.C. 2242, 2243, 2244 (U.S.C. 2242);
 now also under 28 U.S.C. 2242, 2243, 2244 (U.S.C. 2242).

It is noted that the majority of the circumstances which surround
 this case, under the facts, petitioner believes, and therefore says, that
 the majority of the facts are illegal. That, since there is no
 evidence of a writ of habeas corpus, petitioner for the time spent
 in the majority of the facts, in the interests of justice and
 the majority of the facts, under petitioner's release on bail
 under the majority of the facts, United States 82 U.S.C. 11 (1971).

It is noted that the majority of the facts, I am not an attorney and forgive

United States 82 U.S.C. 11 (1972)

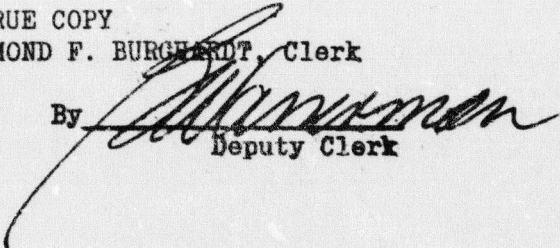
A copy of this document, having been forwarded to the Assistant United States Attorney, it is ordered that this document be filed as a §2255 motion

February 3, 1977

U.S.D.J.

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A TRUE COPY
RAYMOND F. BURGERDT, Clerk

By 
Deputy Clerk

HEARING BEFORE KNAPP, D.J. DATED MARCH 29, 1977
(pp. 50a-117a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
FRED SCHULMAN, :
Petitioner, :
-against- : 77 Civ. 574 (WK)
THE UNITED STATES OF AMERICA, :
Respondent. :

----- x
Before:

HON. WHITMAN KNAPP,
District Judge.

New York, New York

March 29, 1977
2:30 p.m.

APPEARANCES

LEVINE & POZNANSKY, Esqs.,
Attorneys for Plaintiff,
By: MARVIN LEVINE, Esq.,
BENJAMIN D. POZNANSKY, Esq., of Counsel

ROBERT B. FISKE, JR.,
United States Attorney for the
Southern District of New York,
By: MARC MARMARO, Esq.,
Assistant United States Attorney

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2 (Mr. Siff not yet present.)

3 THE COURT: The appearances are all noted. Mr.
4 Schulman, I just want to make one preliminary observation.
5 A problem has occurred to me and I don't know if it is
6 real but my recollection of the argument that was had in
7 your absence suggested that one of the ways Mr. Siff might
8 not have properly represented you is in being fearful
9 that you would testify against him, not having rigorously
10 sought to persuade you to plead guilty and try to cooper-
11 ate with the government. Now, naturally you take the
12 witness stand here and anything you say will be under oath.

13 MR. SCHULMAN: I understand.

14 THE COURT: And your position consistently
15 has been that you knew nothing.

16 MR. SCHULMAN: I see.

17 THE COURT: If you know nothing of course there
18 is no reason why Mr. Siff should have been in any way
19 afraid of making you, as far as I can see, plead guilty
20 and cooperate with the government. If you know nothing
21 you had nothing to offer the government unless you gave
22 him some idea that you did know something. I just raise
23 that problem.

24 MR. LEVINE: Your Honor, I think if I may say
25 something. Part of that argument which would lead into a

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2 matter which I'd like to bring up now anyway is incorpor-
3 ated in Mr. Schulman's motion for further consideration
4 pursuant to Rule 35 where he refers to the fact that perhaps
5 he may have pled guilty or not pled guilty.

6 THE COURT: The only ground of disloyalty could
7 be the fear that Mr. Schulman would turn against Mr. Siff.

8 MR. LEVINE: No, no, I will go into that
9 secondly.

10 THE COURT: I don't see what other ground there
11 would be of any fear of disloyalty.

12 MR. LEVINE: May I go into that secondly.
13 Let me just complete this thought. I don't know if there
14 has been any answering papers to this Rule 35 application,
15 and therefore I am not clear whether the Court considers
16 this as presently before it.

17 THE COURT: All I consider before me is the charge
18 that Mr. Schulman did not have proper representation.

19 MR. LEVINE: That would be pursuant to the
20 2255 motion.

21 THE COURT: That's right.

22 MR. LEVINE: May we respectfully request
23 the Court to consider within the 2255 motion, because
24 the way I read that section there are all kinds of latitude
25 to the Court, any suitable application for relief that

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2 could also include the application pursuant to 35
3 of resentencing of reconsidering sentence.

4 THE COURT: I have already considered it
5 would have those. The time has passed fro that. I have
6 no jurisidction.

7 MR. LEVINE: I understand that there very well
8 may be technical jurisdictions.

9 THE COURT: I have no jurisdiction.

10 MR. LEVINE: We would simply ask on the
11 2255 motion if the Court would consider its jurisdiction
12 in the fullest sense.

13 THE COURT: My jurisdiction is only to deter-
14 mine whether or not there is constitutional validity.

15 MR. LEVINE: That's precisely what I am
16 trying to say, your Honor.

17 THE COURT: That's precisely I'm telling
18 you what I believe.

19 MR. LEVINE: No, I do not read the section
20 that way. I read the section much more broadly than that.
21 I believe that your Honor's comment would come to possibly
22 a conclusion of an all or nothing thing, and I don't believe
23 that section is that narrowly written. If there is any
24 constitutional question even if it doesn't result in
25 a total invalidity.

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1 THE COURT: If there is a constitutional
2 question then of course I will take it. But I don't
3 conceive a constitutional question that wouldn't result
4 in total invalidity. I mean either he was represented
5 or he wasn't.

6 MR. LEVINE: I don't think -- that is, chat really
7 is not our position.

8 THE COURT: You can submit a brief.

9 MR. LEVINE: And our point is that I think
10 that it is not necessary for the Court to determine
11 that the man was incompetently or improvidently or
12 improvidently represented in orde to have jurisdiction
13 under 2255.

14 THE COURT: Let's not argue without the facts.

15 MR. LEVINE: Secondly, the other question that
16 you had raised in reality to Mr. Siff and Mr. Schulman
17 having any knowledge of Mr. Siff's either activities or
18 indictment --

19 THE COURT: No, no, you told me Mr. Siff might have
20 not persuade Mr. Sebhulman to plead because Mr.Siff was
21 afraid that Mr. Schulman would turn against him. That
22 implies --

23 MR. LEVINE: Then that's -- I don't mean to
24 interrupt your Honor but I realize now whether perhaps
25

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2 there might be misunderstanding. It doesn't -- in order
3 to turn against someone I think that is implying that
4 Schulman would have to know something directly against
5 Siff.

6 THE COURT: Directly or indirectly.

7 MR. LEVINE: And I am not saying that at all.
8 I am saying that Schulman could know exactly nothing about
9 Siff, but Schulman could inadvertently give some lead since
10 we are talking about apparently the same kind of offense
11 with the same unit investigating and apparently identity
12 of personnel involved that Schulman could totally unknowingly
13 give some type of lead to something that may reflect on
14 Mr. Siff, that may be in Mr. Siff's mind and even if that
15 were not an actual factual possibility the possibility of
16 it being a fact could also act as a deterrent on Mr. Siff.

17 THE COURT: I see. Okay, fine.

18 Are you ready for Mr. Siff?

19 MR. LEVINE: Yes, surely.

20 (Mr. Siff enters room.)
21
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23
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J A M E S S I F F, having been first duly sworn,
testified as follows:

THE COURT: Mr. Siff, your attorney isn't here
but we were in contact with him so I assume he knows that
you are here.

THE WITNESS: He knows that I am here. I have
spoken to him yesterday.

EXAMINATION

BY MR. LEVINE:

Q Mr. Siff, you know the defendant petitioner
Fred Schulman?

A I do.

Q You had represented Mr. Schulman?

A I have.

Q Mr. Schulman do you recall what offenses he
was tried for?

A If I am not mistaken he was indicted on I believe
it was three counts, one of conspiracy and two of sale of
narcotics and was tried in this court for that.

MR. MARMARO: For the record it was two
counts.

MR. LEVINE: If there are any papers I will
be very happy to refresh your recollection. I am not
trying to test your memory on this. I am just trying to

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lay a foundation.

Q Do you recall approximately when these offenses were alleged to have taken place?

A If I'm not mistaken --

THE COURT: If you are not trying to test his memory why don't you just tell him.

A If I am not mistaken they were alleged to have taken place in early 197 --late 1972, August of 1972 I believe was the date alleged in the indictment.

Q Would it refresh your recollection if you referred to Count 1 of the indictment as referring to dates from about the first day of June, '72 up to and including June 6, '74?

A Yes, it does.

THE COURT: When were the subsequent counts?

MR. MARMARO: Substantive counts was July 7, 1972, your Honor.

MR. MARMARO: The June 6, 1974 date was the date of the original indictment.

MR. LEVINE: I was confused on that. I didn't realize whether the indictment was saying he was doing this activity for a two-year period.

THE COURT: The government for its own good reason or bad always runs the conspiracy to the date

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of indictment. Although it may be clearly a fact everybody long since ceased.

BY MR. LEVINE:

Q So basically then the case concerned particular activity of Mr. Schulman during 1972 came for trial -- the indictment was filed?

MR. MARMARO: Schulman in January of 1975.

A I think that was a superseding indictment to the original one, yes.

Q When were you retained by Mr. Schulman?

A If my memory is correct he surrendered on either August 4th or 5th of 1975 and if I am correct about that I was retained about two days before that.

THE COURT: May I interrupt?

BY THE COURT:

Q You had not been retained before the surrender, before the general time of surrender?

A No, sir, two days before the surrender.

Q You had nothing to do with what is the other fellow's name?

A Co-defendant was Raymond Matte.

Q You had nothing to do with his defense direct or indirect?

THE WITNESS: No, sir.

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1
2 BY MR. LEVINE:

3 Q Now, thereafter, the trial commenced around
4 February of 1976 and was concluded I believe February 5,
5 '76?

6 A If I am correct we had an aborted trial where a
7 jury was selected and then discharged in January of '76,
8 and I think the dates that you gave are correct for the date
9 that it actually went to trial.

10 THE COURT: You are correct about that but why
11 was the jury discharged? I don't remember.

12 THE WITNESS: I had made a motion in the pretrial
13 motion stage of Mr. Schulman's case. If I am not correct
14 I had made -- I mean if I am correct I had made my motion
15 on December 11th of '75 addressed to an inspection of some
16 personal files of one of the investigating Drug Enforcement
17 agents.

18 THE COURT: I remember.

19 THE WITNESS: I think the government had asked
20 for a postponement after the jury was selected to com-
21 plete the investigation.

22 MR. MARMARO: Can I just state one thing
23 that the jury was never sworn the first time.

24 THE WITNESS: Am I correct they were selected?

25 MR. MARMARO: I think we were in the process

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of selecting a jury. I don't recall that we finished it.

THE COURT: We were in the process of selecting and you applied for a time to continue investigation. All right, I remember now.

BY MR. LEVINE:

Q Now you continue to represent Schulman the time that he was sentenced?

A That is correct.

Q The sentencing occurred I believe on May 26, 1976?

A It had been adjourned a few times at our request I think because of an illness in Mr. Schulman's family but I think that was the date of his sentence and I believe he surrendered about three or four days later.

Q Thereafter, around July 21, 1976, you yourself were indicted?

A That is correct.

Q Can you state what offenses you were charged with?

A Yes, I was accused of conspiring with two named co-defendants to violate the narcotics laws and with three, four I believe substantive counts of a sale, alleging sale of cocaine.

Q When are these offenses alleged to have occurred?

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2 A If I am not mistaken, the indictment of
3 me alleged a conspiracy and committing of the sub-
4 stantive offenses, the original indictment alleged from
5 January 1st of 1974 until I believe May of '74, and my sub-
6 sequent plea of guilty to a superseding information the
7 dates alleged were August 15, 1973, until May 1st of 1974.

8 Q So the offenses either charged or which you
9 pled guilty to all occurred prior to the time that you
10 were retained by Schulman?

11 A The allegations were that they all ceased by
12 May 1st of 1974, that is correct.

13 Q So that, whatever you had pleaded guilty to,
14 you had committed prior to the time that you represented
15 Schulman?

16 A That is correct.

17 Q And of course you would know about your own
18 conduct during the time that you represented Schulman?

19 A That is correct.

20 Q Did there -- was there any relation between
21 the investigating units or people involved in your indict-
22 ment and offenses charged and what you pled guilty to
23 and Schulman's indictment?

24 A Yes, sir.

25 Q Can you explain to the Court --

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2 THE COURT: They were identical, weren't
3 they?

4 THE WITNESS: Yes, your Honor.

5 MR. LEVINE: Wanted that on the record.

6 THE COURT: It is identical. It is the
7 same unit, there is no question about that.

8 THE WITNESS: Same unit within the Drug
9 Enforcement Administration, New York Regional Office, yes.

10 Q So it is the same unit. Do you have any con-
11 cept of how large an original we are discussing?

12 THE COURT: Of the unit?

13 MR. LEVINE: The unit first.

14 THE COURT: Doesn't make any difference.
15 The same man was in charge of both. Agent Hall was in
16 charge of both investigations.

17 Q With relation to the United States Attorney in
18 charge of your case and the United States Attorney in
19 charge of Schulman's case?

20 A They were two different individuals.

21 Q Were they otherwise -- they are two different
22 individuals but was there any contact between them or any
23 relationship between them or any physical proximity between
24 them that might indicate that one may or may not be aware
25 of what the other one was doing?

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1 THE COURT: I will take judicial notice that
2
3 anybody in the United States Attorney's Office is charged
4 with knowledge of whate everybody else is doing.

5 MR. LEVINE: Because it is still the same
6 United States Attorney. It is one. That is fair.

7 THE COURT: Whether he knew it or not --

8 MR. MARMARO: I take a little bit of an exception
9 being charged with knowledge what everybdoy is doing.

10 This is an office of a hundred dawyers.

11 MR. LEVINE: I think that the Judge's point
12 is that regardless of the individual members since you are
13 all within one firm it is all chargeable to the knowledge
14 of Mr. Fiske.

15 THE COURT: Certainly you knew about, that
16 there was an investigation against Mr. Schulman.

17 MR. MARMARO: I can represent that to the Court
18 that I was aware. I was not aware of the facts of the
19 investigation.

20 THE COURT: You were aware that it was going
21 on but not the facts?

22 MR. MARMARO: Aware that it was going on
23 and that it involved narcotics.

24 MR. LEVINE: Were you aware that there was
25 an investigation going on involving narcotics involving

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Mr. Siff during the period of trial of Mr. Schulman?

MR. MARMARO: I am sorry. Would you repeat the question.

THE COURT: You weren't asking him.

MR. LEVINE: As long as Mr. Marmaro said --

MR. MARMARO: I was aware at the time of the Schulman trial that Mr. Siff was the subject of an investigation by this office in the general area of narcotics.

THE COURT: You did not know --

MR. MARMARO: I did not know the facts of the investigation. I did not know that the same agents or who the agents were who were investigating Mr. Siff.

MR. LEVINE: But that would be something that the --

THE COURT: Let's forget my interruption and question the witness.

BY MR. LEVINE:

Q During the time that Schulman was arraigned did you subsequently learn of any surveillance of you?

THE COURT: I will exclude that question. Obviously he did. He knows it now.

MR. LEVINE: Yes, but may I be off the record? You see, your Honor, I am a little bit confused at this. I have certified affidavits before your Honor.

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2 THE COURT: Wait a minute. I am just object-
3 ing to the question. You said "Did you subsequently learn?"
4 Obviously he subsequently learned. He knows it now.

5 MR. LEVINE: No, no, no, I didn't tell him what
6 he'd have to tell the court.

7 MR. MARMARO: The issue, your Honor, is Mr.
8 Siff's state of knowledge during the case.

9 THE COURT: Obviously he subsequently learned.
10 He knows it now and this is subsequent to then. Ask
11 him when he learned.

12 MR. LEVINE: All right, there is no issue --

13 THE COURT: I just want the record to prove
14 something.

15 MR. LEVINE: Okay, all right.

16 Q What did you learn as having occurred during
17 Schulman's arraignment and when did you learn this?

18 A As having -- I am sorry, I don't quite under-
19 stand the question. As having occurred at his arrign-
20 ment?

21 Q Well, I will refresh your memory. Was
22 there any -- I show you a document and ask you if you
23 can identify that.

24 A Yes. This is a document that I think I originally
25 prepared for my attorney giving him certain consequences

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Siff

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1 of events so that he would have knowledge concerning a
2 pretrial motion that was being made on my behalf. This
3 is a consequence of events that occurred vis-a-vis the
4 juxtaposed investigations of me and Mr. Schulman as they
5 related to each other concerning the similarity of
6 Drug Enforcement Administration personnel.
7

8 Q There appears a note --

9 THE COURT: Maybe we better mark that
10 for identification.

11 Q There appears a pencil note on top. Do
12 you recall writing that?

13 A Yes, I get the chronology from my attorney's
14 office and I wrote a note on it which I left at your office
15 pursuant to your requesting telling you that this was
16 a chronology as I recall it.

17 THE COURT: When did you make the chronology?

18 THE WITNESS: I made the chronology some time
19 in the fall of 19 -- of last year. In other words, I was
20 indicted July 26th. We were working on pretrial motions
21 in my case probably in September of '76, and this was
22 made about that time.

23 MR. LEVINE: A copy of this was annexed to my
24 motion papers, your Honor.

25 (Petitioner's Exhibit 1 was marked for

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18

identification.)

Q In Exhibit 1 it that you were taped by agents of DEA on April 9th and April 11th. When did you learn that that taping had take place, 1975?

A I learned of that in the pretrial disclosure stage of my own case approximately the last week in September or the -- excuse me, no. I learned of that by September 1st of 1976, because I learned of that when the first stack of transcripts of tapings of me was turned over to my attorney which was within two or three weeks after my own arraignment. So it would be in late August or early September of 1976.

Q Next thing indicates that when you surrendered Schulman S.A. Sullivan was in court?

A My memory is that the two agents who were in court when Mr. Schulman surrendered were special agents Sullivan and Crawford.

Q When did you become aware of their presence in court?

A There was a brief proceeding before Judge Knapp in his courtroom and they were both there.

Q And you saw these people there?

A Yes, sure.

If I am not mistaken Mr. Schulman and I went

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Siff

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back to the DEA offices after that for him to be processed and they were also there then.

Q They were in the DEA offices?

A Yes.

Q Indicating an official capacity with the government.

MR. MARMARO: If he knows, your Honor.

A We were ordered to go to the DEA offices on 57th Street.

Q Do people on the street --

THE COURT: They were DEA agents, weren't they?

MR. LEVINE: My question is whether he knew they were DEA agents.

A Of course I knew that that's how they presented themselves to the Court.

Q Was there a discussion in which they presented themselves as DEA agents?

A Yes, as part of the arraignment motion proceedings since Mr. Schulman had not been arrested but surrendered to the Drug Enforcement Administration required that defendants be processed not only by the U.S. Marshals courthouse building but at their offices on 57th Street. So we were ordered as part of the conse-

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2 quences of bail releasing to go there so that Mr. Schulman
3 could be processed.

4 Q Did you have any concept of what unit of the DEA
5 they were from?

6 A I don't think so at that time. I think that their
7 membership -- it is called Group 22 by the way and I think
8 that it never became, that wasn't revealed I think until
9 Agent Hall testified at the trial.

10 Q At Schulman's trial?

11 A Yes.

12 Q So at Schulman's trial you were aware of an
13 existence of a Group 22??

14 A Yes.

15 Q Did you ever become aware of whether the
16 Group 22 had any particular territory?

17 A I still don't know. I just know that they
18 are assigned to the New York Regional Office of the Drug
19 Enforcement Administration.

20 Q Do you know, do you have any idea how many
21 other units are involved in the New York Regional Office?

22 A No.

23 Q The next notation here says that on October
24 28th, I was taped by special, SCI Lubach. Can you
25 state to the Court when that occurred, and what that is

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Siff

21

2 referring to?

3 A Yes. If your Honor will recall I had
4 a co-defendant named Robert Lubach who was a special
5 confident informant of the Drug Enforcement Administra-
6 tion and I learned in the course of the pretrial, the same
7 time that I mentioned before when I was given transcripts
8 of tapes of me that in a conversation which I had with Mr.
9 Lubach in his apartment on October 28, 1975 he was wired
10 either with what they call a Kel or a Nagra recording
11 device which recorded my conversation with him.

12 Q Can you state to the Court or describe to
13 the Court if there are any similarities or differences
14 as to the kind of offenses with which you were charged
15 and the kind of offenses with which Schulman was charged.

16 MR. MARMARO: Your Honor, I don't see that
17 this really is a proper question. I don't see most of
18 these.

19 THE COURT: Neither do I but let him make his
20 record.

21 A Counselor, I think they, the allegations in
22 both indictments refer to the same sections of Title 21
23 of the United States Code.

24 Q Basically there a similar offense charged?

25 A Same statute. They were different dates

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Siff

22

and different quantities.

THE COURT: It was a conspiracy and substantive crime. It is identical statute, is that correct?

THE WITNESS: Yes, sir.

THE COURT: What you pleaded to of course is a different matter?

THE WITNESS: That is correct, yes.

MR. LEVINE: Your Honor, when I am finished with the questioning so as not to burden the Court if you will permit me I will make a statement as to why I am asking some of the questions I am doing.

THE COURT: Go ahead with the questions. I haven't stopped you.

MR. LEVINE: No, I know that, but -- and I appreciate it.

BY MR. LEVINE:

Q At your trial --

A Excuse me.

Q All right, at the time, during the course of your proceedings --

A Yes, sir.

Q -- did there come a time when the government indicated to you as to when they had completed their case against you, the investigatory phases and can you

1 explain to the Court how this type of discussion would
2 come about?

3
4 A I understand your question, counselor.
5 Preliminarily there was a motion made in my case which
6 asked for dismissal of the indictment based on what was
7 termed the fact that it was a selective prosecution.
8 Allegations of my counsel at that time or at least what
9 he was driving at was that the government had decided
10 to prosecute me or the agents had decided to as a result
11 of certain conduct of mine -- my lawyer was alleging not
12 because of criminal conduct of mine but because of
13 efforts on Schulman's behalf having to do with the in-
14 vestigation of Agent Hall.

15 In reply to that the government stated that
16 the investigation of me had been completed by October 28,
17 1975, and that the matter was at that time no longer
18 in the hands of the Drug Enforcement Administration, but
19 was in fact solely in the hands of the Justice Department,
20 the United States Attorney's office.

21 THE COURT: So that when you first learned
22 this was when you got that reply affidavit?

23 A Yes, which was in I guess, mid September or
24 early October of 1976.
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1
2 BY MR. LEVINE:

3 Q That was the government's affidavit
4 in which you are saying that they claim that their investi-
5 gation of you was concluded as of October 28th?

6 A Counselor, excuse me, I honestly don't recall
7 if it was in the form of an affidavit or a statement made
8 in court.

9 Q Whatever it is, it was the government's con-
10 tention or admission that they had completed in October
11 of '75 which is at least three months prior to the
12 Schulman trial?

13 A Yes, sir.

14 Q Although you had some questions in your mind
15 whether or not you were being specifically selected because
16 of some motions that you made on behalf of Schulman?

17 A That was my attorney's position at the time,
18 and the government --

19 THE COURT: Don't answer this question if
20 you think it would embrace you but was that his position
21 that you dreamed up or did you suggest it?

22 THE WITNESS: Oh, no, I as you might imagine,
23 I related to my lawyer all of the things which we have
24 just now discussed, and I gave him my opinion that that was
25 a possibility.

2 THE COURT: That's what I wanted to know.

3 THE WITNESS: That was the basis of the
4 motion, yes.

5 MR. LEVINE: You gave him your opinion that be-
6 cause you took certain actions that you were therefore,
7 this was somehow or other in retaliation for that?

8 A That was --

9 THE COURT: I might clarify that if you want
10 to because I was there.

11 MR. LEVINE: Surely.

12 THE COURT: He cross examined Agent Hall at
13 Schulman's trial and Agent Hall was quite uptight about it
14 which I thought Agent Hall -- well, what I thought is be-
15 side the point. And that's apparently what he is referring
16 to.

17 THE WITNESS: Yes, that was my first impression
18 and my first desire of how to meet the allegations in the
19 indictment against me.

20 THE COURT: As you know I may say it is not
21 an altogether rare governmental attitude that
22 "You cannot challenge me."

23 BY MR. LEVINE:

24 Q Did there come a time when you had specific
25 knowledge that you were a target of a narcotics investi-

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26

gation?

A Yes, sir, there did.

Q Explain when you, under what circumstances you obtained the knowledge?

A Yes, all right. Mr. Schulman's trial I believe ended February, I think we said 6, 8, whatever it was. On February 26th of 1976, two events occurred which I will bore you with at length. I was also representing in February of 1976 a defendant named Bary Williams in a narcotics prosecution in the Eastern District of New York. That was a case which was also brought and was being prosecuted by this same Group 22. On February 26th, I received from an Assistant United States Attorney named Stanley Grenish in the Organized Crime Division of the Eastern District, U.S. Attorney's Office, the disclosure material in the Williams case. That revealed two things.

First of all, it was affirmatively stated in there that a gentleman named Robert Pincus was a special confidential informant. Now Robert Pincus was later an unindicted co-conspirator and special confidential informant in my case and I had known Mr. Pincus for a period of 15 years having worked for his father who is an attorney in Brooklyn.

So I learned on February 26th, that Mr. Pincus

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1 was an informant for Group 22 who was fresh in my mind
2 from the Schulman trial. Given to us as also part of
3 that pretrial disclosure material where a series of
4 taped conversations between Mr. Pincus and various defend-
5 ants in the Williams case. Now, one of those tapes was a
6 tape recording made at Mr. Pincus' telephone of telephone
7 calls that he was making in the course of making or attempt-
8 ing to make narcotics purchases from the defendants in the
9 Williams case. Left on that tape recording, either
10 accidentally or as in my more paranoid moments deliber-
11 ately.

12
13 Left on the tape recording of Pincus'
14 activity in the Williams case was a brief excerpt of Mr.
15 Pincus placing a phone call to Jeffrey Dali was a co-defend-
16 ant in my case. So when I --

17 THE COURT: But of course you didn't know about
18 your case at this point?

19 A No, but I knew of Mr. Dali and I knew of Mr.
20 Pincus.

21 Q And I realized when I heard that tape record-
22 ing that I knew Mr. Dali, that I knew Mr. Pincus, as has
23 now been revealed I knew naturally at one time in 1973 and
24 1974 I was purchasing narcotics from Mr. Pincus and while
25 I didn't remember it at that time, when I heard the

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2 tape recording I have since learned and now remember
3 advisedly that Mr. Pincus and Mr. Dali met in my,
4 it was either my office or my apartment, and as was one of
5 the allegations in the indictment against me, that I had
6 in fact without placing the connotation on it now that was
7 placed on the indictment I had in fact introduced them.
8 It is a dispute, still a dispute as to the purpose for
9 which I introduced them but naturally when I heard, when
10 those facts came to my attention, I naturally knew that
11 something was brewing and if I can go back on the tape re-
12 cording made of me in October, 1975, with Mr. Lubach --

13 THE COURT: Which you didn't know at this time.
14 You didn't know it existed at the time you are now talking
15 about?

16 THE WITNESS: No, sir, but I mean just bouncing
17 back and forth. I have since not only learned that I was
18 taped on October 28, 1975 but I have heard the tape
19 recording and in that tape recording Mr. Lubach asked me
20 about Mr. Pincus and I related to Mr. Lubach at that time
21 that Mr. Pincus had been to see me April 9th and 11th
22 of 1975 and because of the subject matter of his conver-
23 sation, which I characterize, I may not do that, but because
24 of the subject matter of his conversation with me in April
25 of 1975, in October of 1975 the tape revealed to me that

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I told Mr. Lubach, you know when Mr. Pincus, I called him Bobby, left my home in April of '75, I could have sworn that I was talking into a tape recorder.

MR. LEVINE: One minute. You said that --

THE COURT: He said that to Mr. Lubach, on October 28, 1975.

Q That you had suspicions of having been talking to a tape recorder in April of 1975?

A So that when in February --

Q Were those suspicions like a fleeting suspicion that you had in April of '75 that you were then repeating, this refreshed your recollection?

A In October of '75.

Q So thereafter you had to --

THE COURT: Wait a minute. Let him answer.

A In October of '75 when Mr. Lubach who was apparently prepared for this conversation with me was asking about Mr. Pincus I have since heard myself telling Mr. Lubach, it's funny when Bobby was in my house in April, when he left I was thinking about it and I could have sworn I was talking into a tape recorder. The reason for that was because the, as I recollect then, as I reconstruct it, and you will have to understand this is totally a subjective recross examination in my mind of how

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1 I felt in April of 1975, but the context, Mr. Pincus in
2 brief came to my homewith it, apparently what I now know
3 was \$3,000 in official advance funds which are what are
4 given to special confidential informants to make drug
5 purchases and he came to my home with a request that I go
6 get him some drugs. And that was \$3,000 worth of cocaine.
7 And my suspicions after the fact was because that was
8 totally out of context for anything that Mr. Pincus would
9 normally have expected me to do.
10

11 And I was a defense attorney and had appeared
12 in many drug cases and was aware of how cases are made and
13 so on, so that when I learned in February that Mr. Pincus
14 was in fact an informant it reconfirmed the suspicion
15 I had that that is what he was trying to do in April of
16 '75.

17 BY THE COURT:

18 Q Let's get back to the suspicion.

19 When that suspicion first was awakened in your
20 mind when you heard the tapes or when you saw --

21 A When I found that Mr. Pincus was in fact
22 a special confidential informant and in fact had been making
23 phone calls and purchases so on right around the time
24 that he was --

25 Q So that reminded you of your suspicion?

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2 A Yes, and as a matter of fact, when I learned
3 that in February of '76 I had forgotten the Lubach conver-
4 sation in October of '75 which later reinforced the
5 knowledge I had which I found to be true when I was given
6 the tape recordings.

7 Q This event that happened when you first
8 learned over in Brooklyn of these things that was between
9 the verdict and sentence in this case?

10 A That is correct, sir.

11 BY MR. LEVINE:

12 Q But your original suspicion was in April of
13 '75 which is before the trial here?

14 A Yes. In other words, I cannot say now that
15 I remember my suspicions then but I now understand from
16 what I have seen since then, and tape recordings I have read
17 and so on and so forth that I apparently was suspicious
18 in April 9th and 11th of 1975. As a matter of fact, the
19 tape which I have now heard of the April 11, 1975 conver-
20 sation shows or relates me asking Mr. Pincus to leave my
21 home, and if he wants to come back for dinner or a
22 drink, that is fine, but please not to I think the expression
23 I used in that conversation was don't put me on your
24 cocaine list any more.

25 Q What does that mean?

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3 A Well, in other words, I was telling him
4 "Bobby, I know I used to use drugs, I know I used to buy
5 from you, please don't come around here any more if that
6 is your only purpose in saying hello to me," which is
7 what I said, as I say I didn't remember this in February
8 of '76 but since reading the April 11th conversation I had
9 with Pincus I now in my mind remember that after he left
10 I thought to myself, my gosh, I think I was just being
11 tape recorded and somebody was attempting to get me to make
12 a cocaine purchase for purpose of building a case against
13 me.

14 Q Did you have any other suspicions at any other
15 time during your practice that you were being taped or
16 bugged or investigated?

17 A Not suspicions. At various times over the
18 eight or nine years, ten years that I was practicing criminal
19 law as I am sure happens with other attorneys I was told
20 by various people around you know, clients, former clients,
21 other people's clients that they had been asked about me.

22 Q So that you --

23 THE COURT: I'll take judicial notice that
24 there isn't a criminal attorney in this city that hasn't
25 had that experience.

MR. LEVINE: I'm not --

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THE COURT: I will take judicial notice there isn't a criminal attorney in this city that hasn't had that experience. It's been told by others, by his clients that people have asked about him. I'll go almost as far to say that there isn't a Judge in this city that hasn't had that experience, but go ahead.

BY MR. LEVINE:

Q Did you ever give credence to these statements?

A Yes. Because I believe that it is true, that --

Q So that in fact you did feel that you were being investigated from time to time?

THE COURT: I'll take judicial notice that there isn't a criminal attorney that at some point didn't give credence. Criminal attorneys are by nature paranoid characters.

MR. MARMARO: There is a difference in being asked about and being under investigation.

THE COURT: Of course.

Q Did you have any suspicion or feeling that you were under investigation during your years of practice?

A Other than what I have told you the first

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1 real feeling that I was actually being investigated in the
2 way that an investigation is brought to lead to a case,
3 rather than a general checking out of somebody so to
4 speak, was in connection with the events in --

5 Q In April?

6 A That occurred between April, let's say of '75
7 and the time that I was actually indicted.

8 Q So as of April, '75 you had a concrete
9 suspicion that you were the subject of an investiga-
10 tion?

11 MR. MARMARO: I don't he said that at
12 all, your Honor.

13 THE COURT: He can try to say it now.
14 He tried to lead him into saying it.

15 MR. LEVINE: I believe that's what the man
16 said, your Honor. I'm not trying --

17 THE COURT: Let's find out.

18 A As of April 9, and April 11, 1975 I believed
19 that I had been engaged in a tape recorded conversation,
20 the purpose of which was to find out if I would participate
21 in the purchase of narcotics on behalf of an individual.

22 THE COURT: I take it were you or were you
23 not confident that you had given no indication of
24 such willingness?
25

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THE WITNESS: Oh, I knew that I hadn't, your Honor, yes, sir.

BY MR. LEVINE:

Q You knew that you hadn't done what?

A I knew that in April 9th and 11th, 1975 I had not done anything to encourage any belief that I would get narcotics for Mr. Pincus.

Q That's on that date you are saying, but you also knew what you did prior to that date which was the subject of your indictment and subsequent plea?

A I knew that I, listen, I mean I knew that I had used narcotics which is what I pleaded guilty to, I also did not know, and I did not think that I had committed the crime that was charged in my indictment, but I certainly knew that I knew all the participants, and as a matter of fact, in a subsequent conversation that I had with Mr. Lubach in February of 1976, I told him that I understood what was going on and that as I then realized it these were my words, at the time, and I'm not offering them as truth. I'm must relating to you my words at the time.

I said to him, Bob, this is Lubach, now that I realize everything that happened all that has to be done is there is still to be one or two lies told

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and they can put me in an indictment.

THE COURT: When did you say this?

THE WITNESS: I said this on February, this is the -- I said this on February 26th, 1976, and this is something that counsel hasn't gone into yet but another event occurred on --

BY MR. LEVINE:

Q Tell the Court.

A By strange coincidence --

BY THE COURT:

Q What was the date of the conviction in this case?

A In the Schulman case, February 10th?

MR. MARMARO: I think it was February 5th.

A February 5th or 6th, 1976.

Q What day are you now talking about?

A Okay, as you remember, I said on February 26th I got the disclosure material in the Williams case in the Eastern District which revealed certain things to me about Mr. Pincus.

At 9 o'clock in the morning on February 26th which was about twenty minutes after I left my office to go get this disclosure material in the Eastern District there was a call to me from Mr. Lubach, which the message

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2 on my answering service said that it came in on 9 o'clock
3 in the morning on February 26th. Later that day on my re-
4 turn from court, from the Williams disclosure material
5 proceeding. Let's say I don't remember exactly but
6 5 o'clock in the afternoon of the 26th, Mr. Lubach came to
7 my home and told me that he had been arrested by, he told
8 me that the call in the morning was to see if I wanted to
9 represent him, and that he had been arrested by agent,
10 I don't think it was Agent Hall. I believe it was Agent
11 Gray, who is the assistant supervisor of Group 22.
12 Mr. Lubach told me that afternoon that he'd been arrested
13 by Agent Hall of the Drug Enforcement Administration and
14 the way, he didn't use this language but the way he de-
15 scribed it to me he'd been arrested but not booked or ar-
16 raigned and that he had been told what they wanted him to
17 do to cooperate with them was to testify or give informa-
18 tion concerning me. That was the same day. So now you
19 can see what was in my mind then.

20 Here I found out that day that Mr. Pincus was
21 an informant, that Mr. Pincus has been in contact with
22 Mr. Dali, that Mr. Lubach had been arrested by all of which
23 I knew to be the same Drug Enforcement Administration
24 agents, and that they were the same agents who I had just
25 finished this trial with, on Mr. Schulman's behalf on

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2 February 6th. The balance of my conversation with
3 Mr. Lubach which I, categorizing again, and, but I later
4 believed, and some ways still believe although there is
5 just so much reason to believe that it is just another
6 coincidence, I later believed that this was an attempt on
7 the part of Mr. Lubach working as a special confidential
8 informant to lure me into attempting to obstruct justice
9 or something like that because what his conversation with
10 me on that date was --

11 THE COURT: Was he taped on this occasion?

12 THE WITNESS: Well, no, we asked if they
13 were in the course of disclosure proceedings in my case
14 and the government's reply that there was no tape record-
15 ing on that date. In fact, what they asked in return
16 was if I had made one.

17 As I say, my suspicion, which could be
18 just as easily explained by the coincidence as anything
19 else but my suspicion was that that is what he was attempt-
20 ing to do because the subject matter of the conversation
21 on February 26, 1976 was even asked about me, what should
22 he do, should he run away? Should he get a lawyer? What
23 lawyer should he get? And I told him since he'd be asked
24 about me, No. 1, I couldn't represent him. No. 2, I didn't
25 want to be in the position of referring him to an attorney,

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1 and No. 3 that if I said, these are my words, I said,
2 "Bob, I assume they found out about my drug use which was
3 only a matter of time and just go tell them whatever you
4 know. You know two things Bobby, you know I have never
5 been in the drug business with you and I know that I have
6 used drugs with you for many years. If it will be of
7 substance to you for whatever purposes you want just tell
8 them everything you know about me." That was on
9 February 26, 1976. So by then I knew that there was a,
10 I knew also that when somebody has been asked to copyright
11 and give information about somebody it is no longer an
12 investigation. It is something which is attempting to
13 be reduced to a prosecution and so from February 26th on
14 I knew that somebody was trying to bring a prosecution
15 against me. I did not know then what it would be for al-
16 though I assumed that I didn't know what they are prosecu-
17 ting me for. I knew that I had used drugs and in the
18 course of my use of drugs I naturally had possessed them but
19 I also knew enough to know that just like all this was
20 a coincidence, all these people knew each other, they
21 hadn't all met through me but we all knew each other
22 mutually and I could see if they were making a case
23 against Mr. Lubach because of his activities with
24 Mr. Pincus which I only learned of subsequent to their
25

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1 happening that that's what the basis of a prosecution
2 that they might try to bring against me. I did not
3 know that there would be a prosecution against me until the
4 actual fact of my indictment.
5

6 Q You mentioned another defendant, a Gary Willis?

7 A Williams.

8 Q Williams. Was his charge similar to yours
9 and to Mr. Schulman's?

10 A Yes.

11 Q He was charged by the same, in other words,
12 his investigation was performed by the same group, this
13 22?

14 A That is correct. The same group.

15 THE COURT: Was he a co-defendant in your
16 case?

17 THE WITNESS: No, sir.

18 MR. MARMARO: Williams is the man that you
19 represented in the Eastern District?

20 A Yes.

21 BY MR. LEVINE:

22 Q Could you give us some background as to the
23 dates of his alleged offenses and the dates of his trials
24 as best as you can recall?

25 A Well, I don't know if he is going to trial yet.

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His case was still pending when I resigned from the board. In the course of his case which had been brought in the Eastern District of New York, I made a motion in that district before Judge Dooling to have a change of venue to the Southern District of Florida which was granted, and the last I heard which was when I resigned from the bar in November of '76 that case was still pending in the Southern District of Florida.

Q Was his case prior to Schulman's, after Schulman's?

A The events in his case were supposed to have occurred from February 1975 until, well, they allege the date of the indictment in that case which is I think it was in, I think September of '76 is when that indictment was filed although Williams was not arraigned until January or February of 1976.

Excuse me, his crime was supposed to have been concluded on September of '75. That is when --
BY THE COURT:

Q The indictment in January of '76?

A There were three or four defendants who surrendered at various times. Mr. Williams surrendered in January of '76.

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1
2 BY MR. LEVINE:

3 Q When were you retained by him?

4 A By Mr. Williams?

5 Q Yes.

6 MR. MARMARO: Your Honor, I don't see how
7 this line of questioning --

8 THE COURT: I don't see how any of this is
9 relevant but he is making a record.

10 MR. LEVINE: I am not really trying to waste
11 the reporter's time or your time.

12 THE COURT: I know you are not. Go ahead.
13 Don't waste it by explaining yourself.

14 MR. LEVINE: Thank you.

15 A You want to know when he was arraigned?

16 Q When you were retained.

17 A Oh, two or three days before his arraign-
18 ment. He is a resident of the State of Florida and the
19 case was referred to me by an attorney in Florida. I did
20 not know Mr. Williams before I represented him.

21 Q When was the first time that you interviewed
22 him and got the background on his case and so on?

23 A I would say in mid January of 1976.

24 Q That was prior to Schulman's trial then?

25 A It was prior to, yes, prior to the February

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2 trial of Mr. Schulman, yes.

3 Q Do you recall whether there was any overlap-
4 ing of persons? In other words, were there any names
5 mentioned to you in relation to Mr. Williams that either
6 related to Mr. Schulman or to yourself?

7 A Well, nothing in there outside of the
8 similarity of agents related to Mr. Schulman. The
9 similarity to myself was that Mr. Pincus was an informant
10 for the government in the Williams case, and also in my
11 case.

12 Q When did you learn that, Mr. Williams was an
13 informant in the --

14 A Mr. Pincus.

15 Q -- Mr. Pincus in the Williams case?

16 A As I said on February 26, 1976.

17 Q That was the first time?

18 A Yes, sir.

19 Q Pincus' name was never mentioned to you
20 by Mr. Williams?

21 A No, it was not alleged that Mr. Williams
22 either knew or had ever even met Mr. Williams. There
23 was not even in the context of that case any connection
24 between the two of them. Mr. Pincus' activities in that
25 case had been in connection with co-defendant of

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44

1 Mr. Williams.

2 Q Was there any other person mentioned to you
3 by Mr. Williams whose identity would be familiar to you?
4

5 A None whatsoever, no.

6 Q Did you have any other clients who were the
7 subject of a narcotics investigation from this Unit 22?
8

9 A At any time?

10 Q Yes, at any time and then I will narrow it
11 down.

12 A Yes. I was retained in one more case before
13 my own indictment by a Mr. Robert -- excuse me, by a Mr.
14 Louis Sorrentino. I had represented Mr. Sorrentino in
15 connection with an unrelated narcotics case starting in
16 February of 1976, but he was arrested in a second case in
17 June of 1976 by agents of Group 22. That indictment
18 was later dismissed. After my own indictment I repre-
19 sented a defendant named Robert Stone who was also investi-
20 gated and prosecuted by this, by Agents Hall and others
21 of that group.

22 BY THE COURT:

23 Q He was convicted?

24 A Yes, sir, that case occurred as I say after
25 my indictment, so there was a pretrial hearing in that
case before Judge Wyatt concerning Mr. Stone's knowledge

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1 of the fact that I was under indictment, and that the same
2 investigative agents was on both cases, and he acceded that
3 I remain as his attorney. I understand since it has
4 been raised on appeal.
5

6 Q Since it was raised on appeal and I was on
7 the panel that affirmed.

8 MR. LEVINE: In any event, there was
9 such a pretrial hearing in relation to Stone?

10 A Yes, sir.

11 Q And Stone was aware of whatever your problems
12 were and he was fully apprised?

13 A Yes, sir. There was a hearing in court.

14 Q Was there also a pretrial hearing in relation
15 to Sorrentino?

16 A Yes, sir, before Judge Weinfeld.

17 Q There was. Was Sorrentino fully aware of
18 what your problems were prior to --

19 A He was told that I was under indictment.
20 That it was a narcotics indictment and that there was, that
21 agents of Group 22 were involved in my case, and were
22 involved in his second case which I knew at that time?

23 A Yes, sir.

24 Q Was there any such hearing in relation
25 to Schulman?

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2 THE COURT: Obviously not. He didn't
3 know.

4 A Of course, no, sir.

5 MR. LEVINE: That's the point.

6 THE COURT: I know but don't ask obvious
7 questions. He told you he didn't know he was under investi-
8 gation at the time of the Schulman trial so don't ask him
9 whether he disclosed it to his client.

10 MR. LEVINE: Well, it is conceded obviously
11 as part of the record that the --

12 THE COURT: If he didn't know he didn't tell
13 his client. That is conceded.

14 MR. LEVINE: And it is conceded that the
15 United States Attorney on no government authority told
16 the court and therefore the court did not hold any such
17 hearing.

18 THE COURT: Of course.

19 BY MR. LEVINE:

20 Q Did you disclose to Schulman at any time the
21 fact that you are either under investigation or that you
22 are the target of an investigation?

23 A Yes, I did.

24 Q When?

25 A Shortly after he began to serve his sentence

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1 at Danbury Prison. He asked me to come up there and while
2 visiting with him up there I met a fellow inmate up
3 there who want retain me to do some work for him
4 in a post cor motion he was making, and I told that
5 individual, whose name escapes me at the moment, that
6 I didn't want to get involved in any further cases of that
7 kind because I had found out that I myself was under
8 investigation and that I didn't want to get involved with
9 that until I knew what was going to happen with me.
10

11 BY THE COURT:

12 Q You didn't tell Schulman that though before
13 his sentence?

14 A No, sir.

15 MR. MARMARO: How soon after sentence?

16 A I only, well I'll put it to you this way,
17 Mr. Schulman I believe surrendered to serve his sentence
18 on June 1st which means that he probably arrived in Danbury
19 about June 15th and I was actually indicted July 21st, and
20 this occurred after he was again at Danbury but prior to
21 my indictment so it was some time in that month period
22 there.

23 MR. LEVINE: At that time you thought you
24 were under investigation?

25 A Yes, sir.

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2 THE COURT: I assume if it becomes relevant
3 for the exact date the Danbury records will show when you
4 were there.

5 THE WITNESS: Show my visit, yes, sir.

6 Q But you did not disclose anything to Schulman
7 prior to his sentence?

8 THE COURT: He's already said no, in answer
9 to my question.

10 BY MR.LEVINE:

11 Q You mentioned the word that you were
12 "paranoid". In other words, that in relation to your
13 reaction to the events of October 28th?

14 A As it turn out, counselor, I wasn't paranoid.
15 They were after me.

16 Q Have you ever been treated for a mental ill-
17 ness?

18 A No, sir.

19 Q Do you consider in a loose sense, not in a
20 technical medical sense it a fair description of you to
21 say that you would be, you were a cautious attorney, you
22 would have been very sensitive as to whether or not you
23 may or may not be under investigation?

24 MR. MARMARO: What period of time?

25 MR. LEVINE: It would be during the time

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2 that you represented Mr. Schulman?

3 MR. MARMARO: Well, before the trial or after
4 the trial?5 THE COURT: First before the trial. Break
6 it down.7 Q I can break it down but really I am talking
8 about a basic character trait that I don't think --9 THE COURT: Character traits have a way
10 of changing first before trial.11 A I put it to you this way counsel, if that is
12 what you are asking. As I look back on it now I cannot
13 think of anything at any time that, where I behaved
14 differently or conducted my practice of law differently
15 than if I had not thought I was under investigation.
16 In other words, my attitude was I do, I have done what
17 I have done, and I am going to practice law the way I
18 practice it. As you know I have, whether it is true or
19 not I had at that time felt that my, the investigation of
20 me was because of my activity on behalf of Mr. Schulman,
21 so if you are asking me was I more vigorous because I
22 thought I was under --

23 Q No.

24 A -- thought I was under investigation the answer
25 would be no. I am not aware of any difficulty in my

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2 behavior at any time while I practiced law because I did
3 or did not at that particular time believe I was being
4 investigated.

5 Q No, my question is not that. I am not
6 saying to this Court that you consciously sacrificed any
7 client. I have no reason to make such a statement. And that
8 is not what the basis of our motions is.

9 THE COURT: I think he is asking you to
10 search your conscience to see if there is any doubt in
11 your mind that you might have subconsciously pulled punches?

12 MR. LEVINE: No, that's --

13 A I cannot rule out the possibility that
14 I subconsciously did anything. In fact, in a motion
15 similar to this made by the gentlemen we mentioned earlier,
16 Mr. Sorrentino, I stated there that I cannot rule out the
17 possibility that my behavior during the time period we
18 are talking about was tempered by the fact that I was
19 trying to avoid prosecution of myself. That could
20 possibly have been there although I cannot. I have
21 searched my conscience, my mind, my memory and I cannot
22 think of anything I did any differently than I ever
23 did.

24 MR. MARMARO: The Sorrentino affi-
25 davit was directed solely at the post indictment period,

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was it not?

THE WITNESS: Yes, sir.

BY MR. LEVINE:

Q Is there any reason since you were aware of the fact that you were under investigation prior to Schulman's sentence that you did not tell either Mr. Schulman or the Court?

A Yes, sir.

Q I think you have a right to explain.

A Two things. First of all with regard to Mr. Schulman as soon as became aware on February 26th of what was basically the picture where I believed as I tell you I believed then and I frankly believe it less now, although it hasn't vanished from my mind completely, that the prosecution of me, not the investigation, was the result of my activities on the result of Mr. Schulman's behalf and I didn't tell him because I didn't want him to think I was being a cry baby with him and blaming on him facts that occurred in my own situation. With regard to why I didn't tell --

Q In other words, you were thinking of your own situation at that point?

THE COURT: I don't know why you said in other words. He made a very clear statement.

dwbr

Siff

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1 THE WITNESS: No, I told you that I didn't tell
2
3 Mr. Schulman because I didn't want to think that I was,
4 I didn't want him to think that I was blaming him for
5 investigation of me although I did believe that to be the
6 case at that time.

7 Second part of your question as to why I didn't
8 tell the Court, didn't occur to me to tell Judge Kanpp in
9 particular but in the February 26th conversation with Mr.
10 Lubach I told him that what I wanted to do was to get an
11 attorney and go to the Justice Department and ask what was
12 going on with regard to me. What did they want to know
13 about me? And he asked me at that time if I would not
14 do this because he thought it might interfere with his
15 own efforts on his own behalf insofar as being a cooper-
16 ative government witness.

17 He didn't, although I didn't think there was
18 anything wrong with me knowing that I was under investi-
19 gation, and I didn't think it would in any way jeopardize
20 his position if I get a lawyer and went to the Justice
21 Department and asked what was going on with me he had asked
22 me not to and since he didn't have to tell me to begin
23 with I felt that I was honorbound to respect his request.

24 Q Did you have a doubt towards Schulman --

25 THE COURT: Excluded, that's for me to

1 dwbr

Siff

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2 exclude.

3 MR. MARMARO: I object to that.

4 MR. LEVINE: All right.

5 Q Is there anything that I have not asked you
6 that you would like to add?

7 A No, sir.

8 MR. MARMARO: Just a couple of questions,
9 your Honor.

10 BY MR. MARMARO:

11 Q When did you first consult counsel in con-
12 nection with your own legal difficulties?

13 A On, I believe it was July 16th, Mr. Marmaro,
14 the date that my case was presented to the grand jury
15 and apparently an indictment was voted I received a
16 message that Mr. Cooney called me and I returned his call
17 and spoke to another gentleman in the U.S. Attorney's
18 office. I cannot remember which one who told me that
19 I had been indicted. I consulted with one attorney at
20 that time who referred me to Mr. Nesson who eventually
21 represented me.

22 Q That was the first inkling you had of the
23 pendency of the grand jury proceeding though in your case
24 was when Mr. Cooney called you?

25 A No, it wasn't the first inkling I had of a

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Siff

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1 grand jury proceeding. I received a phone call, I
2 cannot give you the date, but I suppose it could be verified
3 on toll call records from wherever Mr. Lubach was at the
4 time that he was subpoenaed to come back here and testify
5 in the grand jury against me, which was some time two or
6 three days before he went to the grand jury he told me
7 that he had received a subpoena and a telephone call from
8 Special Agent Gray telling him that they wanted him to come
9 in and testify against me, and after he appeared in the
10 grand jury he told me he'd be there, and I said, "Well, you
11 can't tell me what you said in the grand jury, but --"

12 THE COURT: Yes, he can. It is the witness'
13 privilege to talk all he wants.

14 A This was my inaccurate understanding of the
15 law at that time. At any rate I told him, "Don't tell
16 me what you said in the grand jury, but what happened
17 when you left?"

18 And he said, "Well, the prosecutor told me
19 that they would make up their mind whether or not they were
20 going to prosecute you."

21 And I said "Prosecute me for what?"

22 And he said, "For using drugs."

23 And I said, "Well, you know actually using drugs
24 is not a federal crime. You must mean for possessing
25

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drugs."

So it was until I was actually indicted, and Mr. -- as I say it wasn't Mr. Cooney but somebody else in your office who told me the four counts of my indictment, it was only then that I learned that I was being prosecuted for substantive and felonious conspiratorial offenses.

Q Could you estimate approximately how soon before your indictment you had this conversation with Lubach?

A Had to be within two or three days.

BY THE COURT:

Q Which conversation? You had two. The one that he called you and said that he was being subpoenaed that had to be a couple of weeks before the indictment?

A Well, that was whenever he got the subpoena or wherever he was. I never knew where he was.

BY MR. MARMARO:

Q It wasn't a great deal of time before, a couple of weeks?

A Yes, it might even have been less, Mr. Marmaro, I don't know how long before he came in to testify that he was subpoenaed.

Q At the sentencing in the Schulman case there

1 dwbr

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2 was an indication that you were considering filing an
3 appeal in the Schulman case, could you tell us the cir-
4 cumstances surrounding the decision not to appeal?

5 A Well, my memory is that there was an
6 indication that the sentencing that there would not be an
7 appeal in the case and I thought the way that came up is
8 because the question of bail -- no, we had discussed it,
9 and, the appeal and the question of bail came up, if I am
10 not mistaken Judge Knapp referred to the fact of the
11 considerations that a District Court judge has to take
12 into account in granting bail on an appeal one of which
13 was whether it was a meritorious appeal and it was brought
14 up at the sentencing I think that I couldn't think of
15 anything on which to appeal because every motion I made
16 had been granted and every objection I had made had been
17 sustained, so I think I made the statement in court to that
18 effect. But after the sentencing I believe, I am not
19 sure when, but I know I ceased to be Mr. Schulman's counsel
20 at the time of his sentencing and I think that --

21 MR. LEVINE: At the time of the sentencing.

22 THE WITNESS: Immediately after he was sen-
23 tenced I think I ceased to be his counsel. I know that --

24 BY THE COURT:

25 Q How did that come about?

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1 A I know that another attorney was called.
2
3 I believe that I refused to continue because of what
4 I now, then thought was a continuing or hot investigation
5 of me, and I think he got other counsel to bring his, not
6 for appeal but to bring a Rule 35 motion.

7 BY MR. MARMARO:

8 Q You ceased being his attorney right after the
9 sentencing?

10 A Well, the fact that I went to visit him. I
11 know I visted him once here at the MCC and I know I went
12 to visit him in Connecticut at Danbury, so the chances
13 are I at least continued in a, you know, a terminating
14 my relationship with him in a gradual rather than a knife-
15 cutting affair.

16 Q Did Mr. Schulman ever indicate a desire to,
17 did he ever tell you to appeal his conviction?

18 A He never told me to appeal it but he asked
19 me, after I made the statement I am referring to, which
20 I think was at his sentencing about not recalling anything
21 appealable because all the rulings had gone our way I
22 remember him asking me if I would be insulted or if I
23 would mind or whatever if somebody read the record to
24 check up on it. And I said of course not. There have
25 since been some discussion with him. I don't recall

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2 when. It was obvious before I was indicted, about an
3 issue that apparently some other lawyer who read the
4 record brought up concerning I believe some remark of
5 yours in summation, and I think concerning the fact
6 that at his trial a hearsay remark from the witness Diskin
7 was permitted to the effect of Mr. Schulman having been
8 involved with heroin which --

9 THE COURT: You protested that very vigorously.

10 THE WITNESS: I know that we protested the pre-
11 trial and there had been a ruling that it wasn't per-
12 missible. I don't know if it was mentioned at the trial
13 because I haven't read the record.

14 THE COURT: It was to my recollection.

15 THE WITNESS: It was.

16 MR. MARMARO: I think the remark was made
17 and the evidence came in without objection to my recol-
18 lection.

19 Q But let me proceed along this line just
20 for one or two more questions. When did you have this
21 conversation with Mr. Schulman in which he said to you
22 would you be insulted if he had somebody else read over
23 the trial record?

24 A It was either at my meeting with him in the
25 MCC or my meeting with him in Danbury.

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2 Q Would you say it was certainly within a
3 month?

4 A Mr. Marmaro, the only thing I can say for
5 sure is that it was prior to July 17th of 1976.

6 THE COURT: If it is important you can find
7 out the Danbury date.

8 MR. LEVINE: When did Schulman's time for ap-
9 peal expire?

10 A It would have been ten days after the start
11 of the sentence. Or actually ten days after the judgment
12 which was the sentencing which you tell me was on
13 May 26th.

14 Q So therefore if there is a change of attorneys
15 in July or August of '76 that would have nothing to do with
16 his right to appeal?

17 A It was after his ten days.

18 Q It would be after his ten days had expired?

19 A Yes, sir.

20 MR. MARMARO: For counsel's benefit there
21 also is a provision for a 30day period in case of
22 excusable neglect.

23 MR. POZNANSKY: I think any way the state-
24 ment was made that --

25 THE COURT: I don't want any argument. I have

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to leave. I want the record statement. We will have argument later.

MR. MARMARO: I have no further questions, your Honor.

MR. POZNANSKY: At your pretrial hearings you vigorously stated or you stated vigorously or objected vigorously to the word "heroin" being used.

THE WITNESS: Yes, I know it came up.

Q This was at the pretrial, is that correct?

A Yes. It would have been at either a pre-trial motion or in chambers prior to that abortive trial we have talked about.

Q To the best of your recollection the judge agreed with your position?

THE COURT: No, I did not. I can tell you I did not. I know what his trouble --

MR. POZNANSKY: Mr. Schulman expresses a belief that what was said was that this was a cocaine trial and you were not allowing heroin into the picture.

THE COURT: What was said and I can easily see how Mr. Schulman remembers it as he does but what was said at the time that Mr. Siff was negotiating a plea he had obtained the government's agreement that if he pleaded guilty no reference to heroin would be mentioned

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2 in any way, shape or form and it would not be in any
3 way considered on sentence. That agreement did not hold
4 for the trial and I specifically ruled this conversation
5 was within the scope of the conspiracy.

6 MR. MARMARO: The indictment alleged a con-
7 spiracy to distribute Schedule 1 and Schedule 2 narcotic
8 drugs.

9 THE WITNESS: By the way, just if anybody
10 cares there is a record of it.

11 THE COURT: I am sure he remembers it the
12 other way but that is the way it happened.

13 BY MR. POZNANSKY:

14 Q May I ask you a question, Mr. Siff.

15 In your conversation with Mr. Lubach who was
16 your informant --

17 A He was my co-defendant.

18 Q -- co-defendant and on February 26th you
19 learned from him certain facts and that was prior to
20 Mr. Schulman's sentencing.

21 A Correct.

22 Q Other than the fact that Mr. Lubach was your
23 co-defendant --

24 A Well, he wasn't my co-defendant at that time.
25 He became my co-defendant.

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Q You had no relation with Mr. Lubach, is that correct?

A Oh, I have known Mr. Lubach since 1959, we were in the Army together.

Q You had no relation with him at that time as attorney-client?

A Oh, yes, I did.

Q You did?

A I had an attorney-client relationship with Mr. Lubash not concerning any criminal matters but probably five or six civil matters.

Q That was my question whether or not you had an attorney-client relationship with him concerning criminal matters?

A Not concerning criminal matters. Not at that time. I had in connection with, although I didn't physically represent him in court. He had been arrested once in Florida two or three or four years before the time we are talking about and he'd call me at that time from jail in Florida.

Q I am talking about the day in February 26th, the day of sentencing.

A No, I had no attorney-client relationship with him at all during that time period of any kind for

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the reasons I told you.

Q Notwithstanding that --

THE COURT: Don't argue with him. You have got the record.

Q What came into your mind at that time prior to sentencing for your not telling --

THE COURT: He has told us. Next question.

MR. POZNANSKY: I am sorry. I didn't hear what he told us.

THE COURT: You should have listened. We have got that in complete detail. I am going to have argument at some other time. The timing running late.

MR. LEVINE: I like to personally thank your Honor for extending yourself today because obviously it is an imposition.

THE COURT: When would be a convenient time? You want to write a brief, I assume?

MR. LEVINE: Yes, if I may.

THE COURT: Why don't we do it this way. Briefs due either 15 days from the time the minutes are transcribed, if you order them.

MR. POZNANSKY: Your Honor, can we make an application on behalf of the defendant as a poor person to get a copy of the minutes? The people have just gone

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on a limb with --

THE COURT: Well, if he signed the appropriate affidavit you will have to take that up in Part I because I won't be here. I don't see any reason why --

MR. MARMARO: It will be handled as every other similar application is handled.

THE COURT: When is your sentence over, Mr. Schulman?

MR. SCHULMAN: Judge Knapp, I could possibly be eligible for the Halfway House in September or October of this year. I have served ten months of my sentence so far.

THE COURT: The only time period that I can tell you is that you won't hear anything from me until the 18th of April, because I'm not going to be here.

MR. POZNANSKY: Your Honor, is there a possibility of any bail application for Mr. Schulman?

THE COURT: No, I do not have jurisdiction.

MR. MARMARO: You do not, your Honor.

THE COURT: The only observation I will make which is germane that I was again impressed with Mr. Siff's truthfulness.

THE WITNESS: Thank you, sir.

THE COURT: And I think that is all that is

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germane to this hearing.

MR. MARMARO: As to briefing, when would you expect the government's reply brief? I think that before we brief the issue we should have a chance to see what Mr. Levine says. A week or ten days.

THE COURT: I should think a week would be enough. You, speed is in your interest obviously so the limit is 15 days from the day or 15 days from receipt of the minutes, whichever is later, and you can do it as early as you want and whenever you do it the government seven days later then call my chambers and we will set it down.

MR. POZNANSKY: Your Honor, may I make another question, the defendant has asked me inasmuch as there is going to be a time delay with briefs and so forth that he be returned immediately to Danbury?

MR. MARMARO: I think the writ can be satisfied. He's brought down here on a writ. He will go up in ordinary course of business when he would go up. I just want to raise one point and that concerns Mr. Siff's expenses. Your Honor has ruled that these expenses are to be borne by the plaintiff, Mr. Schulman. I believe that was handled last Friday.

THE COURT: That is correct.

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2 MR. MARMARO: Because Mr. Siff appeared
3 pursuant to a government subpoena because your Honor
4 directed me to get in touch with Mr. Siff and as an officer
5 of the court I of course complied.

6 THE COURT: My recollection is that I was told
7 that there was probably an expense. I didn't know Mr. Siff
8 was in California when I made that direction. I don't know
9 if I would have made it if I had known. The government
10 then asked me whether they were required to pay the expenses
11 and I couldn't see any justification for it and so I said
12 cancel the subpoena unless the defendant is willing to
13 pay for the expenses and I am told that, it was
14 reported to me that the defendant was willing to pay for
15 them and so Mr. Siff came on.

16 THE WITNESS: What I did, your Honor, I had
17 a subpoena, a government subpoena which I took to the
18 marshals in District of California where I live and they
19 following their usual procedure gave me a government travel
20 request for my one way plane ticket with instructions
21 that when I am here I am to get a difference between that
22 one-way plane ticket which I was given and the statutory
23 witness fee.

24 So I don't care, but as far as I know I am
25 sitting here under subpoena by the government although

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2 I did have a conversation with Mr. Marmaro in which he told
3 me that as a result of communications between yourself
4 and the petitioner.

5 MR. LEVINE: We will reimburse the govern-
6 ment.

7 THE COURT: You will have to work that out.

8 MR. LEVINE: Your Honor, may I have a copy of
9 Mr. Siff's indictment? I don't have any of that in my
10 file.

11 MR. MARMARO: I can get it for you. It is
12 also in the court file.

13 THE COURT: You can get that. I am sorry
14 you have to rush off. But I am running late to the next
15 hearing.

16 (Time noted: 3:45 p.m.)
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WITNESS INDEXNamePage

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MEMORANDUM AND ORDER OF KNAPP, D.J.
(Filed June 15, 1977) (pp. 118a-122a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x
FRED SCHULMAN,

Plaintiff,

-against-

UNITED STATES OF AMERICA,

Defendant.

75 Civ. 574
75 Cr. 82

- - - - -x
KNAPP, D.J.

Defendant Shulman has moved pursuant to 18 U.S.C. §225 to set aside his conviction on the ground that, for a variety of reasons, he had not been properly represented by counsel or, in the alternative, for reduction of sentence pursuant to Rule 35 or §2255.¹ The main thrust of defendant's contentions is that there was a conflict of interest between himself and his trial attorney, James Siff, Esq., because after defendant had been convicted and sentenced Mr. Siff was himself indicted for similar narcotics offenses and later pled guilty to a similar lesser offense.

Defendant, represented by Mr. Siff, was on February 5, 1976 after a four day jury trial convicted of the crimes of conspiracy to distribute cocaine hydrochloride and distribution and possession with the intent to distribute the same. On May 26,

1976, still represented by Mr. Siff, he was sentenced to a term of two and one half years. As this court was able to observe, Mr. Siff represented defendant with competence and zeal at all stages of these proceedings. Defendant commenced serving his sentence on June 1, 1976. On June 11, no appeal having been filed, his time to appeal expired (Federal Rules of Appellate Procedure 4b).

On July 21, 1976 Mr. Siff was himself indicted for the crimes conspiracy to distribute cocaine hydrochloride and distribution and possession with the intent to distribute the same. On October 26, 1976 having agreed to resign from the Bar, he pleaded guilty to a superceding information charging the misdemeanor of possession of cocaine pursuant to which plea he was, on December 10, 1976, sentenced to a five year term of unsupervised probation.

I.

An evidentiary hearing was held on March 29, 1977 at which Mr. Siff was examined and cross-examined in detail and at which defendant, although present, did not testify. The court finds that Mr. Siff's testimony was truthful in every respect and that it establishes the following:

- (a) Although Mr. Siff had at various times suspected

that the Drug Enforcement Administration might have made him a target of investigation, at no time prior to February 26, 1976 (three weeks after defendant's conviction) did it ever occur to him that he might be in any serious jeopardy.

(b) The possibility of his own involvement could not consciously have affected his representation of defendant.

(c) Although Mr. Siff could not rule out the possibility of subconscious effect, the court rules out that possibility on the basis of its own contemporaneous observations of Mr. Siff's representation of defendant.

(d) Mr. Siff could have had no possible motive to advise the defendant to refrain from cooperating with the government, from pleading guilty, or from taking the stand at trial. As both Mr. Siff and defendant well knew defendant had no knowledge of any facts detrimental to Mr. Siff in which the government might be interested.

(e) Mr. Siff did not act improperly in refraining from telling defendant on or after February 26, 1976 of his fears of prosecution, since it was his belief that the then pending investigation had been motivated by the Drug Administrations' resentment of the zealous tactics he had employed on defendant's behalf. As Mr. Siff explained, he did not wish defendant to feel that he was being blamed for Mr. Siff's troubles.

(f) The court, having denied defendant's application for bail pending appeal on the ground that any such appeal would be frivolous, accepts Mr. Siff's explanation that lack of possible merit was his sole basis for advising defendant not to appeal. In this connection the court notes that defendant's present counsel has failed to suggest any possible basis for appeal.

(g) Mr. Siff had ceased the use of cocaine prior to his representation of defendant, and did not use any at any time during such representation.²

The court also concludes, on the basis of all the evidence before it, that there never came a time when the United States Attorney was under any obligation to advise the defendant or the court of a possible conflict of interest between Mr. Siff and defendant. There is not a scintilla of evidence that any member of the United States Attorney's staff ever suspected that such a conflict might exist.

The court also concludes there is no evidence that the government intercepted in the course of investigating Mr. Siff any conversations between the defendant and his attorney.

II.

With respect to the Rule 35 motion, more than 120 days having elapsed between the commencement of sentence and the

bringing of this motion, the court is without jurisdiction. The defendant has cited no authority for the proposition that §2255 confers any discretionary power with respect to the terms of sentence.

Accordingly, the defendant's motions are in all respects denied and the petition pursuant to §2255 is dismissed.

SO ORDERED.

Dated: New York, New York
June 13, 1977

WHITMAN KNAPP, U.S.D.J.

FOOTNOTES

1. Defendant originally filed motions pro se on February 17 and 25, 1977. He subsequently retained counsel who supplemented these with an affidavit dated March 17, 1977, and a post hearing memorandum filed April 28, 1977.
2. In this connection, the court takes judicial notice of Mr. Siff's statement (which the court did and does credit) at his own sentence that he had ceased the use of cocaine "before March of '75" (5 months prior to his first representation of defendant).

NOTICE OF APPEAL (Filed June 23, 1977)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

FRED SCHULMAN,

Plaintiff,

-against-

UNITED STATES OF AMERICA,

Defendant.

-----X

NOTICE OF APPEAL

77 Civ. 574

75 Cr. 82

S I N C E :

PLEASE TAKE NOTICE that plaintiff hereby appeals to the United States Court of Appeals for the Second Circuit from the order entered on the 13th day of June, 1977 in the United States District Court for the Southern District of New York (KNAPP, J.) dismissing his petition brought pursuant to 28 U.S.C. 2255, and from each and every part thereof.

Dated: New York, New York
June 23, 1977.

Yours, etc.

LEVINE & POZMANSKY
Attorneys for Plaintiff
1350 Avenue of the Americas
New York, New York 10019
Tel. (212) 581-3264

TO: HON. G. THOMAS GIBBS
United States Attorney for the Southern
District of New York
1 St. Andrews Plaza
New York, New York

COURT OF APPEALS
SECOND CIRCUIT

FRED SCHULMAN,
Plaintiff-Appellant...

- against -

UNITED STATES OF AMERICA,
Defendant-Appellee.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

SS.:

I, Reuben A. Shearer, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at 211 West 144th Street, New York, New York 10030.

That on the 25th day of July 19 77 at One St. Andrews Plaza
New York, N.Y. 10007
deponent served the annexed ~~Apparatus~~ *Appendix* upon

Robert Fiske

the in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein,

Sworn to before me, this 25th
day of July, 19 77

Reuben A. Shearer

Reuben A. Shearer

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1979